

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:
NATIONAL PRESCRIPTION
OPIATE LITIGATION

CASE TRACK THREE

Case No. 1:17-md-2804
Cleveland, Ohio

October 4, 2021
1:00 P.M.

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VOLUME 1

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS,
BEFORE THE HONORABLE DAN A. POLSTER,
UNITED STATES DISTRICT JUDGE,
AND A JURY.

- - - - -

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1 (testing testing testing testing))

2 MONDAY, OCTOBER 4, 2021, 1:01 P.M.

3 THE COURT: Okay. Good afternoon.

4 Please be seated.

13:01:53 5 Okay. I've been advised that all 14 jurors
6 are present so I assume both sides are ready to go.

7 MR. LANIER: Yes for plaintiffs, Your
8 Honor.

9 THE COURT: Is this better? Yeah, the
13:02:58 10 shield is no -- well, I'm far enough away, I'll take the
11 shield off.

12 Do we have some more chairs here? Someone
13 is bringing in some more chairs?

14 Okay. Let's bring in the jury, please,
13:03:18 15 then.

16 (Jury in.)

17 THE COURT: Okay. Thank you.

18 Please be seated.

19 All right. Good afternoon, ladies and
13:10:02 20 gentlemen. I hope you all had a good weekend.

21 Before we begin, I introduced you to the
22 lawyers last week.

23 At times, the parties, the two plaintiff
24 counties and the four defendant corporations, will have
13:10:19 25 party representatives in court.

1 I've made it optional so sometimes they'll
2 be here, sometimes not. If they're not here you're not
3 to draw no negative inference. This case is very
4 important to both counties and all four defendants.

13:10:39 5 So I don't know if we have any party
6 representatives here. I thought we would start out as a
7 courtesy to introduce them. So, I guess, Mr. Lanier, if
8 there are any representatives of either Lake or Trumbull
9 County.

13:10:53 10 MR. LANIER: Thank you, Your Honor.

11 May it please the Court. Your Honor, we
12 have a representative for both counties here today,
13 Ms. Kim Fraser. If you would stand up, please, Kim.

14 She's the Executive Director of the Lake
13:11:03 15 County, it's ADAM, it's Alcohol Drug Addiction and Mental
16 Health Board so we have Ms. Fraser here.

17 And Ms. Caraway is here from Trumbull
18 County and she's the Executive Director of the Mental
19 Health and Recovery Board, and they'll be here throughout
13:11:20 20 the trial, Your Honor.

21 THE COURT: Okay. Thank you, Mr. Lanier.

22 All right. Are there any defendant party
23 representatives?

24 MR. STOFFELMAYR: Yes, Your Honor.

13:11:26 25 Kaspar Stoffelmayr for Walgreen's, and we

1 have with us here Peter Wilson, who is one of the senior
2 lawyers in the Law Department at Walgreen's.

3 THE COURT: Good afternoon, Mr. Wilson.

4 Anyone else?

13:11:41 5 MR. DELINSKY: Good afternoon, Your Honor.
6 Good afternoon, ladies and gentlemen of the jury.

7 With us today is Andrea Zollett from CVS.

8 THE COURT: Good afternoon, Ms. Zollett.

9 MS. SULLIVAN: Good afternoon, Your Honor.

13:11:55 10 Good afternoon, jurors. Thanks for coming in. Diane
11 Sullivan for Giant Eagle with Chantale Fiebig, also an
12 attorney working with me for Giant Eagle. And today we
13 have Emily Mooney from Painesville Ohio Pharmacy, a Giant
14 Eagle pharmacy in Lake County, and she's here
13:12:10 15 representing the company today.

16 A FEMALE SPEAKER: Good afternoon.

17 THE COURT: Good afternoon, Ms. Mooney.

18 MR. MAJORAS: Good afternoon, Your Honor.

19 Good afternoon, folks.

13:12:18 20 My name is John Majoras. I'm one of the
21 lawyers for Walmart, and with us today is Mr. Roger
22 Schultheis. Mr. Schultheis is the Vice President of
23 Health and Wellness Operations at Walmart, which is
24 responsible for its pharmacy operations.

13:12:33 25 A MALE SPEAKER: Good afternoon.

1 THE COURT: Good afternoon, sir.

2 Okay. Members of the jury, now that you
3 were sworn in last week, I want to give you some
4 preliminary instructions to guide you in your
13:12:45 5 participation in this trial.

6 This is merely a summary and not the
7 complete statement of the law that I'll give you at the
8 end of the case, which instructions will control your
9 deliberations and verdicts, and each of you will have a
13:12:59 10 copy of my final instructions.

11 But to help you follow the evidence, I'll
12 give you a brief summation of what plaintiffs must prove
13 to establish their claims.

14 First, however, it is my duty to give you
13:13:13 15 what is called the admonition. This is a standing Court
16 order that applies throughout the trial. I will try to
17 remind you of the admonition at every recess, but if I
18 forget to remind you, it still applies.

19 Ladies and gentlemen, you have been
13:13:28 20 selected as jurors in this case. We've taken the time, a
21 lot of time last Wednesday and Thursday, to seat a
22 neutral jury so that this case can be decided just on
23 what goes on in this courtroom and not on any outside
24 influences.

13:13:43 25 You are required to decide this case based

1 solely on the evidence that is presented to you in this
2 courtroom. It is my role as the Judge to determine what
3 evidence is admissible and what is not admissible.

4 It would be a violation of your duties and
13:13:58 5 unfair to the parties if you should obtain other
6 information about the case which might be information
7 that is not admissible as evidence.

8 You must carefully listen to all of the
9 evidence, and evaluate all of it. Do not reach any
13:14:11 10 conclusions until you have heard all the evidence, the
11 arguments of the attorneys, and my final instructions of
12 law. Otherwise, you will have an incomplete picture of
13 this case.

14 Do not discuss this case among yourselves
13:14:26 15 or with anyone outside the jury until the case is over,
16 and do not discuss it at all outside of the jury
17 deliberation room.

18 The reason for this is you might be given
19 information or an opinion that could alter the way in
13:14:39 20 which you view the evidence or the instructions or even
21 how the case should come out.

22 Such an opinion or conclusion would be
23 based on an incomplete or inaccurate view of the
24 evidence, and, therefore, would be clearly unfair.

13:14:52 25 In addition, you absolutely must not try to

1 get information from any source outside the courtroom.
2 This ban on sources outside the courtroom applies to
3 information from all sources, such as family, friends,
4 the Internet, reference books, newspapers, magazines, TV,
13:15:12 5 radio, an iPhone, Android, Blackberry, or other
6 Smartphone, iPad, and any other electronic device.

7 This ban on outside information also
8 includes any personal investigation looking into news
9 accounts, talking to possible witnesses, reenacting the
13:15:31 10 allegations in the complaint, or any other act that would
11 otherwise affect the fairness and impartiality that you
12 must have as jurors.

13 If you see anything in the print media
14 about this case, do not read it. If something on the TV
13:15:46 15 comes in about the case, change the channel.

16 This effort to exclude misleading
17 information and outside influences information also puts
18 a limit on getting legal information through TV
19 entertainment.

13:16:00 20 This would apply to popular TV shows, such
21 as Law and Order, Suits, Judge Judy, older shows such as
22 Boston Legal, Perry Mason or Matlock, and any other
23 fictional show dealing with the legal system. In
24 addition, this would apply to shows such as CSI and NCIS,
13:16:21 25 which use scientific procedures to resolve criminal

1 investigations.

2 This and other shows may leave you with an
3 improper preconceived idea about our legal system.

4 As far as this case is concerned, you're
13:16:33 5 not prohibited from watching such shows if you want to
6 watch them. However, there are many reasons why you
7 cannot rely on TV legal programs, including the fact that
8 these shows, first, are not subject to the Rules of
9 Evidence and legal safeguards that apply in this
13:16:49 10 courtroom; and, second, they are works of fiction that
11 present unrealistic situations for dramatic effect.

12 While they are or may be entertaining, TV
13 legal dramas condense, distort, or even ignore many
14 procedures that take place in real cases and real
13:17:08 15 courtrooms. No matter how convincing they try to be,
16 these shows simply cannot depict the reality of an actual
17 trial or investigation.

18 You must put aside anything you think you
19 know about the legal system that you saw or see on TV.

13:17:21 20 On top of legal dramas, there are also TV
21 programs specifically related to opioid addiction in the
22 United States. News programs, such as 60 Minutes, have
23 broadcasted segments on this topic. If you have seen any
24 such programs, you are not to consider them during this
13:17:39 25 trial.

1 Additionally, on or about the second week
2 of this trial, Hulu will be releasing a mini series
3 called, "Dope Sick," about opioid addiction. You are
4 instructed to avoid this and similar programs throughout
13:17:54 5 the duration of the trial and to not consider any such
6 programming during your deliberations.

7 Finally, you must not have contact with
8 anyone about this case other than the Judge and Court
9 employees. This includes sending or receiving e-mail,
13:18:11 10 Twitter, text messages or other updates using blogs and
11 chat rooms and the use of Facebook, Instagram, LinkedIn,
12 and other social media sites of any kind regarding this
13 case or any aspect of your jury service during the trial.

14 Again, you're not prohibited from using any
13:18:28 15 of these sources, devices, channels of communication,
16 whatever, but you are prohibited from using them in any
17 way about the trial, what you see, what you hear.

18 If anyone tries to contact you about this
19 case directly or indirectly, do not allow that person to
13:18:46 20 have contact with you. If any person persists in
21 contacting you or speaking with you, that could be jury
22 tampering, which is a very serious crime. If anyone
23 contacts you in this manner, report this to my Courtroom
24 Deputy as quickly as possible.

13:19:00 25 And I want to add, you may encounter some

1 of the lawyers, some of the party representatives outside
2 the courtroom, in the restroom, whatever. If you see
3 them, they're going to walk away, they're not going to
4 talk to you, and your first reaction is they're being
13:19:19 5 rude.

6 They're not being rude. They're under
7 strict orders not to talk to you. And you may say what's
8 wrong with saying hi or good morning or good afternoon.
9 Obviously nothing's wrong with that, but that could lead
13:19:29 10 to a response or someone could see them talking to you
11 and that could be a big problem.

12 So they're not being impolite. They're
13 just following Court orders and you should do the same.

14 You should know that if this admonition is
13:19:42 15 violated, there could be a mistrial. A mistrial means
16 that the case is stopped before it's finished and must be
17 retried at a later date.

18 This can lead to a great deal of expense
19 for the parties and for taxpayers; namely, you and your
13:19:56 20 neighbors. No one wants to see money, especially tax
21 dollars, wasted. If a mistrial were to be declared based
22 on a violation of this admonition, the juror responsible
23 could be required to pay the cost of the first trial and
24 could also be punished for contempt of court.

13:20:11 25 It will be your duty to find from the

1 evidence what the facts are. You and you alone are the
2 Judges of the facts. You will then have to apply those
3 facts to the law as I will give you and I'm summarizing
4 now, and I'll give more detailed instructions at the end
13:20:29 5 of the case.

6 You must follow that law whether you agree
7 with it or not.

8 Nothing that I may say or do during this
9 trial is intended to indicate, nor should be taken by you
13:20:41 10 as indicating, what your verdict should be. The evidence
11 from which you will find the facts will consist of the
12 testimony of witnesses, documents and other things
13 received into the record as exhibits, and any facts the
14 lawyers agree or stipulate to or that I instruct you to
13:21:00 15 find.

16 Certain things are not evidence and must
17 not be considered by you. I'll list them for you now.

18 Statements, arguments and questions by the
19 lawyers are not evidence. The answers of the witnesses
13:21:11 20 are the evidence. The questions are not.

21 Objections to questions are not evidence.
22 Lawyers have an obligation to their client to make an
23 objection when they believe evidence being offered is
24 improper under the Rules of Evidence or whether a
13:21:25 25 question is objectionable. These objections serve to

1 help me.

2 The purpose of objections is to ensure the
3 presentation of evidence that is proper and to keep out
4 all irrelevant matters. As jurors, you should not hold
13:21:40 5 objections against either party or feel that either side
6 is trying to keep something from you. And you should not
7 be influenced by my -- by the objection or by my ruling
8 on it. If the objection is sustained, just ignore the
9 question. And the lawyer will ask another one. If it's
13:21:58 10 overruled, treat the answer like any other. If you're
11 instructed that some item of evidence is received for a
12 limited purpose only, you must follow that instruction.

13 And if an objection is made and I feel I
14 need to hear a little more from the lawyers, and it's
13:22:13 15 going to be relatively short, what we're all going to do,
16 we're going to put on our headphones, there will be some
17 white noise and we'll be having a brief conversation
18 about that, and I'll make my legal ruling. Then we'll
19 take our headphones off and then the examination of the
13:22:28 20 witness will continue.

21 And that's a quick way so we can handle
22 things outside of the presence of the jury but do it in a
23 safe way. Before COVID, we would all sort of huddle up
24 at the side-bar, but obviously no one is doing that, so
13:22:42 25 we're using the headphones.

1 Testimony that I exclude or tell you to
2 disregard is not evidence and must not be considered.

3 All right. Delays during trial should not
4 be considered by you or held against any party. When a
13:23:04 5 case on trial is recessed or adjourned and the trial
6 doesn't commence right at the designated time, the delay
7 most likely is caused by either something I had to do on
8 this case that had to be done right then, or some
9 emergency on one of my other many, many cases. I'm going
13:23:23 10 to try to avoid those as much as possible, but over six,
11 seven weeks, it's likely that something of an emergency
12 nature will come up.

13 So don't hold it against either side. Hold
14 it against me. And don't feel that your time is being
13:23:35 15 wasted.

16 Again, as I said in my admonition, anything
17 you may have seen or heard outside the courtroom is not
18 evidence and you must disregard it.

19 You as jurors must decide this case based
13:23:51 20 solely on the evidence presented right here within the
21 four walls of this courtroom. This means that during the
22 trial, you must not conduct any independent research
23 about this case, the matters in the case, the individuals
24 or corporations involved in the case.

13:24:04 25 In other words, you should not consult

1 dictionaries or reference materials, such as the
2 Internet, websites, blogs, or use any other electronic
3 tools, such as Smartphones and iPads, to obtain
4 information about this case or to help you decide this
13:24:19 5 case.

6 I know it's hard. We all use them. But
7 you just cannot do it. So don't try to find out any
8 information from any source outside the confines of this
9 courtroom.

13:24:29 10 All right. There are two kinds of
11 evidence: There's direct evidence, there's
12 circumstantial evidence.

13 Direct evidence is simply evidence, like
14 the testimony of an eyewitness, which, if you believe it,
13:24:42 15 directly proves a fact.

16 For example, if a witness testified that he
17 saw it raining outside, and you believed him, that would
18 be direct evidence it was raining.

19 Circumstantial evidence, by contrast, is
13:24:54 20 simply a chain of circumstances that indirectly proves a
21 fact. If someone walks into the courtroom wearing a
22 raincoat covered with drops of water and carrying a wet
23 umbrella, that would be circumstantial evidence from
24 which you could conclude that it was raining outside.

13:25:09 25 I'm going to give you further instructions

1 on these, as well as other matters, at the end of the
2 case, but keep in mind that there's no legal difference
3 between direct or circumstantial evidence. One is not
4 better than the other. You should consider both kinds of
13:25:24 5 evidence.

6 I'm sure you're going to hear the lawyers
7 talk about the credibility or the believability of
8 witnesses. These words mean the same thing. Part of
9 your job as jurors is to decide how believable each
13:25:36 10 witness is. That's your job, it's not mine.

11 It's up to you to decide if a witness's
12 testimony is believable and how much weight you think it
13 deserves. You're free to believe everything that a
14 witness says, or only part of it, or none of it at all,
13:25:52 15 but you should, of course, act reasonably and carefully
16 in making those decisions.

17 Let me suggest some things for you to
18 consider in evaluating each witness's testimony.

19 First, ask yourself if the witness was able
13:26:05 20 to clearly see or hear the events. Sometimes even an
21 honest witness may not have been able to clearly see or
22 hear what was happening and might make a mistake.

23 Next, ask yourself how good the witness'
24 memory seems to be. Does the witness seem able to
13:26:19 25 accurately remember what happened?

1 Next, ask yourself how the witness looks
2 and acts while testifying. Does the witness seem honest
3 in trying to tell you what happened, or does the witness
4 seem to be lying?

13:26:30 5 Next, ask yourself if the witness has any
6 relationship to either side of the case or anything to
7 gain or lose that might influence the witness' testimony.
8 Does the witness have any bias, prejudice, or reason for
9 testifying that might cause him or her to lie or to slant
13:26:47 10 testimony in favor of one side or the other?

11 Ask yourself if the witness testifies
12 inconsistently while on the witness stand or if the
13 witness says or does anything off the stand that is
14 inconsistent with what the witness said while testifying.
13:27:02 15 If you believe that the witness is inconsistent, ask
16 yourself if this makes the witness' testimony less
17 believable. Sometimes it may. Other times it may not.

18 Consider whether the inconsistency is about
19 something important, or about some unimportant detail.

13:27:19 20 Ask yourself if it seems like an innocent
21 mistake, or if it seems deliberate.

22 Finally, ask yourself how believable the
23 witness' testimony is in light of all the other evidence.
24 Is the witness' testimony supported or contradicted by
13:27:34 25 other evidence that you find believable?

1 If you believe that a witness' testimony is
2 contradicted by other evidence, remember that people
3 sometimes forget things, and that even two honest people
4 who witness the same event may not describe it in exactly
13:27:48 5 the same way.

6 These are only some of the things that you
7 may consider in deciding how believable each witness is.
8 You may also consider other things that you think shed
9 some light on the witness' believability. Use your
13:28:03 10 common sense and your everyday experience in dealing with
11 other people, and then decide what testimony you believe
12 and how much weight you think it deserves.

13 During the trial, it's possible that I may
14 ask questions of a witness to bring out facts not then
13:28:19 15 fully covered in the testimony. Please do not assume
16 that I hold any opinion on the matters to which my
17 questions may have related. Remember, that you, as
18 jurors, are at liberty to disregard all of my comments or
19 questions in arriving at your own factual findings.

13:28:34 20 I want to touch on burden of proof, and
21 this was mentioned, I think, during jury selection.

22 In a civil action like this case, the
23 burden of proof on the plaintiffs is by a preponderance
24 of the evidence. To establish something by a
13:28:52 25 preponderance of the evidence means to prove that

1 something is more likely true than not.

2 Another term for "Preponderance of the
3 evidence" is greater weight of the evidence. If you want
4 to think of a teeter totter, it's just enough evidence to
13:29:06 5 tip it to one side or the other as opposed to completely
6 level.

7 This standard does not require proof to an
8 absolute certainty since proof to an absolute certainty
9 is seldom possible in any case or it doesn't require
13:29:24 10 proof beyond a reasonable doubt. That's the proof we
11 require in a criminal case.

12 This is a civil case. Preponderance of the
13 evidence, just remember, like a teeter totter, the
14 plaintiffs have to put in enough evidence that tips that
13:29:37 15 teeter totter towards their side.

16 In determining whether any fact in issue
17 has been proved by a preponderance of the evidence, you
18 may, unless otherwise instructed, consider the testimony
19 of all witnesses, regardless of who may have called them,
13:29:49 20 and all exhibits received in evidence, regardless of who
21 may have produced them.

22 The plaintiffs in this case, as you know,
23 are Lake County and Trumbull County. There are four
24 defendants, three of which are national pharmacy chains
13:30:03 25 and one of which is a regional pharmacy chain.

1 The defendants are in alphabetical order
2 CVS, HBC Giant Eagle, Walgreen's and Walmart.

3 The four pharmacy defendants each bought
4 prescription opioids from pharmaceutical manufacturers
13:30:22 5 and then distributed those prescription opioids to their
6 pharmacy stores or bought and received prescription
7 opioids from other distributors.

8 The pharmacy stores then used these opioids
9 to fill prescriptions for patients written by doctors and
13:30:39 10 other health care practitioners.

11 The pharmacy defendants each played two
12 related roles during their business dealings with
13 prescription opioids. One is a distributor and one is
14 dispenser. First, they acted as a distributor when they
13:30:56 15 bought opioids from manufacturers or other third-party
16 distributors and then distributed the drugs to their own
17 pharmacy stores.

18 Second, they acted as a dispenser when
19 their pharmacy stores filled prescriptions for patients.

13:31:09 20 The two counties, Lake County and Trumbull
21 County, allege that each pharmacy defendant failed to
22 monitor, detect, investigate, report, and stop certain
23 suspicious shipments and illegitimate prescriptions of
24 opioids which allowed the opioids to be diverted to
13:31:27 25 illegal use.

1 The counties allege these suspicious
2 shipments and illegitimate prescriptions caused a public
3 nuisance, which is defined as an ongoing substantial
4 interference with the public health in their counties.

13:31:40 5 The pharmacy defendants deny the counties'
6 claims that they caused a public nuisance. The
7 defendants contend that they complied with their legal
8 obligations, violated no duties, and that if a public
9 nuisance exists today in these two counties, it was
13:31:56 10 caused by persons other than the pharmacy defendants.

11 I will give you detailed instructions on
12 the law at the end of the case, and those instructions
13 will control your deliberations and decision.

14 But to help you follow the evidence, I will
13:32:10 15 now give you a brief summary of what plaintiffs must
16 prove in order to establish their claim.

17 Note that my summary of -- note that my
18 summary of the claim -- in my summary of the claim, I
19 will use the word "Person" or "Persons."

13:32:26 20 Please bear in mind that for this claim,
21 corporations are considered persons.

22 A public nuisance is an unreasonable
23 interference with a right held by the public in common.
24 A public nuisance includes an unreasonable interference
13:32:42 25 with public health or public safety.

1 A right common to the general public is a
2 right or an interest that belongs to the community at
3 large. It is a right that is collective in nature. A
4 public right is different from an individual right that
13:32:58 5 everyone has, like the right not to be assaulted or
6 defrauded.

7 For a defendant to be held liable for
8 creating a public nuisance, a plaintiff must show by the
9 greater weight of the evidence that the defendant did one
13:33:10 10 or both of the following two things:

11 One, the defendant engaged in intentional
12 conduct that caused a significant and ongoing
13 interference with a public right to health or safety; or,
14 two, that the defendant engaged in unlawful conduct that
13:33:28 15 caused a significant and ongoing interference with a
16 public right to health or safety.

17 For this claim, the plaintiffs must prove
18 that the conduct of one or more defendants was a
19 substantial factor in creating an ongoing public
13:33:44 20 nuisance.

21 And remember, you must consider the
22 evidence against each of the four defendants separately,
23 and you'll be asked to make a separate decision at the
24 end of the case.

13:33:53 25 This concludes the summary of the law that

1 will help guide you as you hear the evidence.

2 Now, a few words about your conduct as
3 jurors. Again, first, during the trial, you are not to
4 discuss the case with anyone or permit anyone to even
13:34:09 5 attempt to discuss it with you or in your presence.

6 As to anyone who you may come to recognize
7 as having some connection with this case, such as the
8 attorneys, the parties, the witnesses or members of my
9 staff, to avoid even the appearance of impropriety, you
13:34:26 10 should have no conversation whatsoever with them while
11 you're serving on the jury.

12 If you see any of these people in the hall,
13 the elevator, stairway, on the street, just ignore them.
14 They will understand that you are not being impolite but
13:34:38 15 you're obeying my instructions. They've also been given
16 the same instructions.

17 The point of this is that if someone sees
18 you talking with anyone connected with this case, even if
19 you're only exchanging greetings, the Court may have to
13:34:56 20 hold a hearing to find out what was said and that becomes
21 cumbersome. So just don't have any conversation
22 whatsoever with anyone connected with this case. Do not
23 discuss this case with anyone. Obviously if you have a
24 question or an issue, you'll see either Mr. Pitts or
13:35:09 25 Ms. King. You can ask them and they will communicate

1 with me.

2 All right. If anyone tries to communicate
3 with you outside of this jury room, the courthouse or
4 whatever, bring it to the Court's attention promptly.

13:35:21 5 Again, you've got to decide this case
6 solely on the evidence presented here. You are not to
7 conduct any independent research, reading or
8 investigation about this case.

9 Don't listen or read anything, anything
13:35:37 10 touching on this case in any way. Consult dictionaries
11 or reference material, anything on on the Internet,
12 social media whatsoever to help you decide it.

13 Everything you need to know, you're going
14 to see and hear right here. So if you come across an
13:35:52 15 article that you think is touching on the case, just put
16 it aside. Read it after the trial.

17 And until you retire to deliberate, you may
18 not discuss this case with anyone, even your fellow
19 jurors, because once you start discussing the case,
13:36:05 20 you're going to start forming conclusions and it's unfair
21 to the plaintiffs, it's unfair to the defendants to reach
22 conclusions until you've heard all of the evidence.

23 So again, don't form any conclusion or form
24 opinions as to whether the plaintiff has met its burden
13:36:24 25 at all until all the case is open -- is closed and ended.

1 So keep an open mind until you start your deliberations
2 at the end of the case.

3 In my courtroom, I allow jurors to take
4 notes. You've got notepads. If you wish, you may take
13:36:39 5 notes. If you don't take -- if you do take notes, please
6 leave them in the jury room when you go home at night.
7 These notes are for your own personal use and will not be
8 distributed or read by anyone else for any purpose.
9 After the trial is concluded, they'll be destroyed.

13:36:55 10 And we do this, some people, it helps their
11 memory and recollection to take notes. I'm one of those.
12 But for some people, it's a distraction. So you know
13 what works best for you, and if you want to take notes,
14 fine. If you don't want to, that's fine.

13:37:10 15 All right. The trial is now going to
16 begin. First, plaintiffs will make an opening statement,
17 which is simply an outline to help you understand the
18 evidence as it comes in.

19 Next, defendants will make an opening
13:37:25 20 statement and you will hear from some or all of them.

21 Opening statements are neither evidence,
22 nor arguments. Since plaintiffs have the burden of
23 proof, the plaintiffs go first and they will present
24 their witnesses and physical evidence. And counsel for
13:37:39 25 the defendants will cross-examine those witnesses.

1 Then it will be the defendants' turn, and
2 they'll present witnesses and physical evidence, and then
3 the plaintiffs may present a short rebuttal case,
4 rebuttal testimony and evidence.

13:37:52 5 In my courtroom, I allow jurors to ask
6 questions, but this is how I work it. We have direct
7 testimony and then cross, cross-examination. And after
8 the cross-examination, if any of you has a proposed
9 question, just write it down on one of the slips of paper
13:38:14 10 in your notebook, tear it out and give it to the
11 Courtroom Deputy, either Mr. Pitts or Ms. King, and
12 she'll give the question to me.

13 I'm going to look at it and then I'm going
14 to show it to the lawyers for both sides for their
13:38:28 15 review. The attorneys may choose to ask the question of
16 that witness when they conduct further questions, or they
17 may not. If they decide not to ask the question, don't
18 hold it against anyone. It may be because the answer
19 sought, it isn't relevant to this case, or counsel may
13:38:46 20 believe that the question can best be answered by
21 questioning another witness, and the lawyers know which
22 other witnesses are coming and they may say, "All right,
23 this is a good question but I'm going to ask it of a
24 following witness, not this witness."

13:39:00 25 So it's to let the lawyers know that you've

1 got a question. So I'll remember to do that, but if I
2 forget and you have a question after cross-examination,
3 just raise your hand and I will address it.

4 After all the evidence is presented, I'm
13:39:13 5 going to instruct you on the law, and then the attorneys
6 will present their closing arguments to summarize and
7 interpret the evidence for you. And after that, you will
8 retire to deliberate on your verdicts.

9 So we're going to start with the opening
13:39:27 10 statements of the plaintiffs. I plan to take a
11 mid-morning -- mid afternoon break around 3:00 o'clock.
12 I don't expect we're going to finish all of the opening
13 statements today. We'll finish those up tomorrow. And
14 when they're concluded, then the plaintiffs will call
13:39:42 15 their first witness.

16 So I believe Mr. Lanier is going to do the
17 opening for the plaintiffs, so Mr. Lanier.

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1 OPENING STATEMENTS ON BEHALF OF THE PLAINTIFF

2 MR. LANIER: Thank you, Your Honor.

3 And may it please this Court, ladies and
4 gentlemen, first, Ms. Court Reporter, can you hear me?

13:39:56 5 Is this little mic working? And it's not working. Is it
6 working when I hold it up here? This will be
7 interesting.

8 All right. I will try to raise my volume
9 level to make it more suitable for you and try not to
13:40:37 10 blast all of y'all out of here.

11 My name is Mark Lanier and I'm really
12 delighted to get to try this case before you. I've got
13 several people with me that you sort of met, but I need
14 to give you a little more introduction.

13:40:49 15 So I'll start here with Ms. Maria Fleming,
16 and Maria is a local lawyer who is here. She helps
17 represent Lake and Trumbull Counties. She's fantastic.
18 I need her here because she keeps up with my exhibits and
19 that becomes really critical in this case so if you see
13:41:07 20 me huddling with her, you'll know what it's about.

21 Sal Badala is the next lawyer here. Sal is
22 also -- we don't let Sal talk because he's from New York
23 and I'm from Texas, they barely let me talk but, no, Sal
24 is a marvelous lawyer from New York who happens to also
13:41:26 25 represent these counties.

1 And you met Ms. Fraser and Ms. Caraway.
2 You have not met Frank Gallucci, who is a local lawyer
3 and Frank represents the counties as well, and so thank
4 you for being here.

13:41:38 5 Again, Ms. Caraway -- I did Ms. Fraser.
6 I'm saving you.

7 Pete Weinberger is a local lawyer as well.
8 In fact, his office is right down the street and he's
9 here to make sure I don't mess up.

13:41:52 10 So if he's talking to me, you know I've
11 done something wrong.

12 He may take a witness or two in this trial
13 as well, especially if I'm messing up that bad. So I
14 want you to know it's an honor to get to try the case
13:42:06 15 with him.

16 And last, I want to introduce Rachel
17 Lanier. You might see me hug on her. Don't think I've
18 married someone young enough to be my daughter. She's
19 not my wife, she is my daughter, and it's a joy to get to
13:42:21 20 try this case with my daughter. And if I'm talking to
21 her, you'll understand either my shirt is untucked or
22 she's saying some things that only a daughter could say
23 to me and nobody else could.

24 So that's our team that we've got here and
13:42:34 25 we're honored to be here but we couldn't make it without

1 Juan Wilson. Juan is sitting back here. Mr. Wilson has
2 worked with us for 20 years or so. He works all the
3 audio/visual.

4 He's not a lawyer but the Court has
13:42:48 5 graciously allowed him to sit on this side of the bar so
6 that I can switch back and forth between computers and
7 IPs and get the best job I can of communicating to you
8 because that's my role.

9 My role in this trial is to set forward for
13:43:02 10 you the evidence so that you can do your job and make a
11 determination of whether or not these companies
12 individually have responsibility for the public nuisance
13 in this case.

14 And so I represent Lake and Trumbull
13:43:24 15 Counties against these companies, and the case itself is
16 about the distribution and the dispensing of opioids.
17 Now, you've got screens all around you. You've got
18 screens over there, you've got screens over there, you
19 have a screen right here, the Judge has a monitor, the
13:43:39 20 same thing the lawyers do. The reason why is because we
21 think it helps communicate.

22 There will be times during the trial where
23 it will also show evidence because some of the evidence
24 is in documents. It's not all just what people say.

13:43:51 25 But the case itself is about the

1 distribution and dispensing of opioids, not just in Ohio
2 but it's expansive, as you'll hear.

3 You know, we've got counties that are close
4 to the border of Pennsylvania. We've got counties that
13:44:10 5 are on a highway up from Florida. So you're going to
6 hear different testimony about all of this, but the key
7 is, is there a nuisance in Lake and Trumbull Counties and
8 then you have to figure out if there is, indeed, a
9 nuisance. And nuisance is not in the everyday sense of,
13:44:29 10 you know, my kid sister was a nuisance growing up.

11 No. Nuisance in this sense is an intrusion
12 in the public right to just enjoy life within the
13 communities in some ways. The Judge will give you a real
14 specific instruction.

13:44:44 15 But then the question becomes are these
16 companies, any of these companies or all of them, a
17 substantial contributing factor in creating this
18 nuisance?

19 Now, let me be very clear from the very
13:44:59 20 beginning, I believe the evidence will show you that
21 there's a boatload of people responsible. As I indicated
22 in jury selection, it's voir dire in His Honor's Court.
23 Where I come from we call it voir dire because we don't
24 speak French in Texas, but when we were asking questions,
13:45:22 25 I specifically asked you, you know, do you understand the

1 idea that there might be lots of people involved in
2 creating a problem of this magnitude. And I think that's
3 what you're going to hear from the evidence.

4 This opening statement is just my roadmap.
13:45:38 5 This is me telling you how this evidence is going to
6 unfold in the trial based upon my best understanding.

7 So I'll talk to you about some of the
8 witnesses. That doesn't mean that everyone that I'm
9 going to put on the stand I've talked about. I may have
13:45:54 10 to add some. The Judge has got us on a clock, and so
11 I've only got 75 hours to do my case and my
12 cross-examination, barring something unforetold, and so I
13 may have to delete some witnesses. I may have to change
14 some things.

13:46:11 15 But this is my best estimate of how it's
16 going to go down right now at this moment.

17 Now, during this COVID time, my daughter
18 introduced me to a word that I should have known before
19 evidently but I didn't. It's "Binge watching." Binge
13:46:28 20 watching is evidently watching the same -- a show one
21 after the other until your eyeballs want to explode or
22 something.

23 And I thought since I've learned how to
24 binge watch -- and, yes, I've been guilty. I've binge
13:46:45 25 watched on Netflix, I've binge watched on Amazon Prime --

1 I thought I might use that as a theme to keep you awake
2 for the two-and-a-half hours His Honor has given me to
3 address you today.

4 You say, "Oh, mercy, two-and-a-half hours
13:47:02 5 of that guy?" Sorry. That's the way it's coming down.
6 And I'm going to do the best I can.

7 But we're going to do it based on my idea
8 of binge watching. You're really just going to get three
9 episodes or something. I mean just think of the time,
13:47:18 10 okay, two-and-a-half hours, we can binge watch that long.

11 So our binge watching show, though, is not
12 Netflix, it's not Amazon Prime, it's a bunch of witnesses
13 that are going to be coming out.

14 And when I binge watch, I do it in three
13:47:32 15 different ways or there's three aspects to binge
16 watching, I should say.

17 Number one, I want to hear about it. I
18 want to hear about whatever it is I'm going to watch
19 because some things sound pretty good, some things
13:47:44 20 frankly don't. There are some things that my wife and I
21 enjoy watching. There are some things that I'd rather
22 watch and she's just not into.

23 So I want to hear about the show, see if
24 it's one I'm into.

13:47:55 25 Second thing is that I watch it. And when

1 I'm done, I tell other people about it. I'll say, "Hey,
2 this is a great show, you need to watch it," or, "Hey,
3 this show is terrible, don't watch it," or, you know,
4 we'll discuss it, which character reminds you of what.

13:48:12 5 So those three ideas are the way I've
6 structured my opening statement for you. As I tell you
7 how the evidence will come in, I'm going to do it by
8 talking about the episodes, and then I'm going to watch
9 them with you, and then we'll talk about them at the end.

13:48:28 10 So here we go. Let's start with "hear
11 about it."

12 If I had a title for this show, I would
13 title the show, "Opioid Epidemic." I would tell you this
14 is a nonfiction show. By that, I mean it's a
13:48:45 15 documentary. This is real, this is truth, this isn't
16 made-up, it's not fairy tail. The Judge talked about
17 different TV shows that are to be distinct from the
18 courtroom. Those are little 30-minute, maybe 45-minute,
19 maybe an hour episodes that contain everything
13:49:04 20 soup-to-nuts. They're fake.

21 This is not one of those shows. This is
22 the real thing.

23 You're going to actually -- this is why it
24 takes seven weeks or six weeks or however long His Honor
13:49:17 25 will give us. But this is why. Because you get it and

1 you get it with the Rules of Evidence that make America
2 what it is and make our court system what it is.

3 You're going to learn about opioids more
4 than you ever dreamed, although some of you from your
13:49:32 5 training probably have a pretty good grasp of things
6 already. But you'll hear about drugs we're especially
7 concentrating on; Hydrocodone, which is one of dozens of
8 different types of opiates, and you'll also hear about
9 Oxycodone, which is another one of a group.

13:49:59 10 Now, when we talk about what opiates are
11 and opioids, it includes a range of legal drugs like
12 Hydrocodone and Oxycodone but there are also illegal
13 opiate drugs. So, for example, heroin is an opiate drug
14 and heroin's been around for a long time. But it's an
13:50:21 15 opiate. It happens to be illegal in the United States,
16 but it's still an opiate.

17 There's another one that the medical
18 science in a sense has almost even invented. It's called
19 Fentanyl. And Fentanyl is this mega powerful opiate that
13:50:41 20 typically is prescribed when someone is at end stage of
21 cancer, and the pain is just unbearable.

22 But Fentanyl is a drug that can be legal
23 but there's also a street Fentanyl which is illegal. And
24 we'll hear about all of this.

13:51:00 25 What makes them opiates? They come from

1 the poppy plant. Now, not this pretty little poppy plant
2 here. You might could get something from it, but this is
3 the kind you can even plant in your garden here in
4 America, and they don't let you plant the kind that's
13:51:16 5 going to turn you into a dope dealer here so this is just
6 the pretty one.

7 The one we're concerned about here is the
8 one that goes by the name *Papaver somniferum*. *Somniferum*
9 from the Latin word for put me to sleep and *Papaver* is
13:51:28 10 the poppy.

11 And this is the opium poppy. This is what
12 it looks like. And what happens with the opium poppy is,
13 after the petals fall off, you've got this bulb or head
14 up at the top and then it looks like a little crown on
13:51:44 15 top of the head. And if you took a knife or some sharp
16 object and you sliced into that bulb, a latex or a fluid
17 would come out. And it's from that fluid that you get
18 these opiates.

19 Now, we're not the first people to figure
13:52:05 20 this out. This has been around for a long time. You can
21 go back and find ancient Sumerians. The Sumerians were
22 over in the Middle East and their empire was over in
23 Mesopotamia between the Tigris and the Euphrates over in
24 the Iraq area. But you can go back thousands of years in
13:52:32 25 B.C. and read about their use of the opium plant and the

1 latex, the fluid that came out of it. They called it hul
2 gill.

3 And I say that very boldly. We don't
4 really know how to pronounce the cuneiform script that
13:52:50 5 they had, but that's the scholar's best estimate. I can
6 tell you that it translates to the happy plant because
7 that's what they thought of it.

8 And they even would shape some of their
9 jugs to look like it. You say how does that look like
13:53:02 10 it? Well, if you took that poppy plant and you turned it
11 upside down, you'd see how these jugs look like it.

12 I was able to get a place to release the
13 Sumerian poppy jug for you, and it's exactly what it was.
14 And they had ridges built into the pot so they could rub
13:53:24 15 the latex and they would put the opium residue in with
16 wine and it made a good sleeping potion.

17 I'll tell you, if you go back to Roman
18 times, the Romans -- I've put a vase here. Let me pull
19 this out. This is actually a Greek vase, the Greek gods
13:53:47 20 Thanatos is the Greek word for death. Thanatos was the
21 Greek god of death. He had a half brother. His half
22 brother was the god of sleep. His name is Hupnos. If
23 you get Hupnotized, you're put to sleep.

24 Hupnos and Thanatos wore poppy seeds around
13:54:06 25 their head or poppy plants in the wreath because the

1 medicine or the latex or the sap was used, not just to
2 help people sleep, make people happy, but also suicide
3 was not illegal then, also used especially among the
4 older people as a way to choose when you die because it
13:54:24 5 will stop your breathing.

6 So opium's been around for a long time.
7 You can chart through the -- it's referenced in the
8 Bible. There's a Hebrew word Rosh, which means head, and
9 Rosh is used for a bitter plant. But a lot of scholars,
13:54:43 10 Gasineus I think, and others, believe that that plant is
11 referencing -- it's translated bitter gall sometimes,
12 sometimes bitter root, but it's referencing the same
13 plant, the opioid plant.

14 So you've got this. You can bring it into
13:55:00 15 English times. You can take this book that really hit
16 the market in 1822, '23, Confession of an Opium Eater,
17 and it just talked about how this opium was so
18 destructive to the person who was eating it and
19 biographing it.

13:55:21 20 You've got the Chinese opium dens in the
21 1870s; huge problem. Heavens, you've got beyond that the
22 Wizard of Oz. I mean Dorothy, you know, "I'll get you my
23 pretty," and all that stuff. The Wizard of Oz, the book,
24 not the movie. The book talks about this. I don't
13:55:45 25 remember the movie that much. Maybe the movie does as

1 well.

2 I've got the book here but I've put it into
3 the PowerPoint. If this is working good enough, I'll
4 throw it up here for you to read it along with me. Look
13:55:56 5 at this passage. You'll see the illustrator used the
6 pretty poppies, didn't use the real ones that have the
7 opium in the high enough concentration to make a
8 difference, but it says, "So they kept walking until
9 Dorothy could stand no longer." She's walking among the
13:56:13 10 poppies. "Her eyes closed in spite of herself and she
11 forgot where she was and she fell among the poppies fast
12 asleep."

13 It continues, "If we leave here, she will
14 die, said the Lion. The smell of the flowers is killing
13:56:32 15 us all. I myself can scarcely keep my eyes open and the
16 dog is asleep already."

17 So this is the idea that this was
18 well-known, such that Frank Baum writes about it in his
19 book, "Run fast said the Scarecrow to the Lion and get
13:56:51 20 out of the deadly flower bed as soon as you can."

21 There's a Journal of Neurology and an
22 abstract was published in the Journal. This just came
23 out in 2019, but in the abstract, it talks about an
24 8,000-year history of use and abuse of opium and opioids.
13:57:10 25 How that matters for a successful control of the

1 epidemic.

2 And here's what the writer said. He said
3 "8,000-year-old hardened Sumerian clay tablets are the
4 earliest prescriptions of opium." You already knew that
13:57:26 5 because I told you that earlier.

6 "Ancient Greeks, Indians, Chinese,
7 Egyptians, Romans, Arabs, people in the middle ages,
8 Europeans from Renaissance to now knew opium as an
9 ever-approved, next-door medicine, a panacea for all
13:57:45 10 maladies."

11 References in the odyssey of the Bible, and
12 use by known leaders and minds like Homer, Franklin,
13 Napoleon, have removed the label of immortality -- or
14 immorality from its use."

13:58:05 15 "Recognition of subjective pain is the
16 fifth vital sign, with pressure on providers to prescribe
17 scheduled medicines, added additional strokes to this
18 menace of pre-historic dimensions, the opioid epidemic,
19 which shreds 13 percent high school seniors every year."

13:58:28 20 And one of the main reasons this happens is
21 some people are especially prone and become addicted to
22 opioids.

23 You will hear the evidence in this case
24 from Dr. Anna Lembke. Now, I think she's going to be my
13:58:47 25 second witness. That's my plan right now. My plan, my

1 very first witness is actually going to be a gentleman
2 that works for the defendants, works for CVS, Mr. Tom
3 Davis, and we'll start with him because I want to
4 challenge him on some of the things about CVS.

13:59:04 5 I want you to hear that challenge fresh
6 from hearing the CVS opening statement and that of the
7 other lawyers. So he'll be my first witness.

8 But Anna Lembke, Dr. Lembke, will be my
9 next. Now, she -- you may have heard her podcast. She
13:59:20 10 did podcasts on Drug Dealer, M.D. and that was before she
11 came out with a book which has just been published, *Drug*
12 *Dealer, M.D. How Doctors Were Duped, Patients Got*
13 *Hooked, and Why It's So Hard to Stop."*

14 Dr. Lembke is at Stanford University.
15 She's a psychiatrist, a medical doctor, psychiatrist, and
16 an addiction specialist.

17 And I'm going to ask her to come in here
18 and to testify about how addiction works. The domino
19 effect of prescription drugs to illegal drugs;
13:59:57 20 not -- I'll explain it in more detail.

21 There's a misused -- no, a multi-used
22 phrase that we'll talk about, about the gateway effect.
23 And it's not valid in the sense of, I think it's been
24 disproven in the sense of gee, you smoke a cigarette so
14:00:14 25 pretty soon, you're going to be mainlining heroin.

1 That's not it.

2 And this, some people use the language here
3 "gateway effect" but it's a different concept. This is
4 one opiate leads to another opiate to another opiate.
14:00:26 5 It's within that family.

6 But she'll talk about how that domino
7 effect has worked even into illegal drugs, and the role
8 that pharmacies have played in this.

9 I think it's easy for all of us to look at
14:00:42 10 the manufacturers of these medicines, like Perdue Pharma
11 and say, "Hey, you played a significant part because you
12 told everybody you invented a drug that wasn't addictive
13 and it was addictive and you told everybody to prescribe
14 this for pain when it shouldn't be prescribed."

14:00:58 15 I don't think any of the parties are going
16 to fuss that. I don't think any of the parties are going
17 to fuss that not everybody did their jobs right and there
18 are lots of different parts to this. But you'll be
19 stunned to find out, I suspect some of you at least, the
14:01:16 20 role the pharmacies play. And you'll hear about that.

21 But some of it will come from Dr. Lembke.
22 She will talk about the pleasure/pain balance, how a
23 normal dopamine level allows somebody to balance between
24 pleasure and pain and how important it is that we
14:01:33 25 maintain that balance and how the infiltration into our

1 bloodstream across the blood brain barrier into the brain
2 affects that.

3 Because human beings are designed to seek
4 out pleasure. They're designed to avoid pain. And when
14:01:55 5 you've got a drug that manipulates your brain and changes
6 that balance, it does dangerous things to you and to me.

7 So I've told you about the history of this.
8 Before we get to the second point that I need in opening,
9 let me talk to you a little bit more and tell you how the
14:02:15 10 United States has handled this historically.

11 Pre-1914, it was the wild west. It was
12 anything goes. It's just like the TV shows where the
13 fellow takes his carriage out into the wild west town and
14 stands up and starts hocking his Uncle Joe's medicine,
14:02:39 15 good for whatever ails you. You buy a fifth of whiskey
16 for a dollar but if you pay two dollars, you'll get his
17 medicine. And people would buy it and he could put opium
18 in it, he could put anything he wanted to in it. It was
19 pretty wide open here in the U.S.

14:02:54 20 And as a result, there were problems. So
21 in December of 1914, the United States passed something
22 called the Harrison Act. And the Harrison Act was just
23 designed to try to get some handle on some of these drugs
24 that were destructive to Americans.

14:03:13 25 Among those drugs were some opiates. And

1 so, for example, you can still find on eBay and other
2 places heroin tablets that were subject to the Harrison
3 Act. Here's hypodermic tablets that you can use for
4 heroin; crush them up, mix them up, inject them.

14:03:38 5 And this was something that was regulated
6 by the U.S. Government. You had to have a license to
7 import it, to sell it, and you had to pay taxes on it.

8 And so you can even find tax stamps for
9 opiates and that's the way it was. So if we put it up
14:03:54 10 here on a timeline, we've got the wild west until 1914
11 and then we've got the Harrison Act.

12 And that lasted up until 1970. But there
13 were some problems in 1970 that the nation needed to
14 confirm. We had a lot of people who served the military
14:04:15 15 and served valiantly in Vietnam, especially, and had been
16 exposed to opiate products, and they came back addicted.

17 And this led to a surge in illegal opium
18 availability through heroin and some other drugs. And
19 this was before Perdue invents their supposedly
14:04:38 20 nonaddictive opiates that we're talking about in this
21 case.

22 But what happened then is Richard Nixon
23 came along and he signed into law in 1970 the Controlled
24 Substances Act. Now, that's a very critical point of law
14:04:57 25 that His Honor will interpret and explain to you in the

1 right measures at the right time.

2 As he's already told you, everything I'm
3 telling you right now is what I expect the evidence to
4 be. Not a lick of evidence is coming out of my mouth.

14:05:12 5 Couldn't give it to you if I tried. If I was to give
6 evidence, I'd be disqualified as a lawyer because I can't
7 do both.

8 So I'm not giving you evidence and I'm not
9 giving you the law. Nobody's qualified to do that but
14:05:25 10 His Honor. So I'm giving you my understanding of what I
11 believe you will hear from him, but that's the best I can
12 do at this point as part of my roadmap.

13 So when Richard Nixon, President Nixon,
14 signs this, this Controlled Substances Act set out
14:05:47 15 different levels of drugs. One they called Schedule 1
16 drugs. Now, these are drugs that really don't have a
17 medicinal use. This is LSD, this is heroin. These are
18 drugs that have a high potential for abuse but no
19 medicinal use.

14:06:07 20 Then there are Schedule II drugs. These
21 have a limited medical use but a high potential for abuse
22 and addiction. And this includes Oxycodone, OxyContin,
23 Percocet, Percodan, and since 2014, it includes
24 Hydrocodone, Vicodin.

14:06:35 25 So level, Schedule III drugs are those that

1 have a limited medicinal use and potential for abuse and
2 dependence. This includes things like testosterone
3 supplements. This is where Hydrocodone was until 2014
4 when it got bumped up to Schedule II. There's Schedule
14:06:55 5 IV, but it's not going to come up in this case, I don't
6 think, same with Schedule V.

7 Now, the law in the United States
8 authorizes enforcement of this through the Drug
9 Enforcement Administration, which is part of the U.S.
14:07:14 10 Justice Department, DOJ, the Department of Justice.

11 And this is often abbreviated DEA, the Drug
12 Enforcement Administration. So the DEA has policing
13 authority in a sense.

14 And one of the witnesses that I'll be
14:07:33 15 calling probably, depending on timing, either one or two
16 witnesses after Dr. Lembke, is this gentleman right here,
17 his name is Joe Rannazzisi. Everybody, friend and foe
18 alike, just calls him Joe Ran. So if you hear someone
19 say Joe Ran, you know they mean Joe Rannazzisi.

14:07:59 20 Now, Joe Rannazzisi used to be with the
21 DEA, the Drug Enforcement Administration's Office of
22 Diversion Control. I'm going to talk about what
23 diversion was in a moment. But he was an agent for the
24 DEA and he became the Director of this.

14:08:17 25 He's not only -- he's no longer with the

1 DEA. He's not only someone who was formerly an agent and
2 a Director; he's also a pharmacist. The guy went to
3 pharmacy school.

4 He's not just a pharmacist; he's a lawyer.
14:08:33 5 The guy went to law school. He's got more degrees than a
6 thermometer.

7 He is a whistleblower. And he's got
8 hands-on experience. If his name didn't ring a bell with
9 you all, but you'll hear about how he's been written up
14:08:52 10 in news reports. You'll hear about him getting on "60
11 Minutes," you'll hear about him testifying before
12 Congress, you'll hear about all of this.

13 He got his start in the regional office
14 that governs also Ohio. It's all governed out of the
14:09:11 15 Detroit division of the DEA. And he's going to come, and
16 part of what he'll testify to, I expect, is that Nixon's
17 law, the Controlled Substances Act, the CSA, it set up
18 what's called a closed system for opioids.

19 Let me explain what I mean. Under this,
14:09:35 20 this is a really busy slide, I hate busy slides. I
21 apologize right now. I apologize. This violates every
22 rule of slide-making that I know. But here it is. Let's
23 live with it, and I made it. I can't blame anybody else.

24 Everyone inside the circle must be
14:09:53 25 registered. What does that mean? It means you've got to

1 file registration papers with the DEA. You've got to
2 say, "I want to be registered. I want to do work in this
3 area. I want to, in a sense, make money off of these
4 drugs."

14:10:08 5 You can't make money off of them unless
6 you're registered.

7 And so this includes people who import the
8 serum, the opium serum, fee bank, whatever it may be, it
9 includes the people who import it into the country
14:10:27 10 because there are quotas of how much can be imported.

11 It includes the manufacturers. If you want
12 to make the drugs, you got to register.

13 It includes this group I'm calling the
14 middle people, but these are called distributors in the
14:10:46 15 DEA language. What that means is they buy from the
16 manufacturers, and they sell to the pharmacies.

17 So they're kind of the middle person.
18 They've got to be registered.

19 If a doctor's going to write the
14:11:01 20 prescription to take to the pharmacy, he's got to be
21 registered.

22 If a pharmacy chooses to sell these
23 dangerous drugs, they've got to be registered.

24 And the registration binds you to an
14:11:19 25 understanding of the law and following the law.

1 And it's extremely important. And it's
2 important because of this word "Diversion" that I told
3 you I would talk to you about earlier.

4 Houston doesn't really have a football
14:11:37 5 team. We've got the Texans, and they're about playing on
6 the high school level this year, but the Cleveland Browns
7 look pretty good. And the stadium's right over here.
8 And I suspect if I'm trying to drive around the stadium
9 on game day, I might get diverted.

14:11:57 10 Diversion in an everyday language means not
11 being along the path that you were intending.

12 And it really means basically the same
13 thing in a case like this. So if you think about a road
14 and if you stay on the road, you're using it properly,
14:12:18 15 that's the proper sales of the product, the proper
16 dispensing, the proper manufacturing, the proper
17 everything. If you follow the law, that's proper.

18 But anytime you see that word "Diversion,"
19 that means that something unlawful has happened.
14:12:36 20 Somebody is doing something they should not be doing with
21 that drug.

22 And so when I told you that this circle of
23 legal sales is a closed circle, everyone has to be
24 registered. The people who sell outside of the circle or
14:12:54 25 who don't keep -- don't follow the law properly, and they

1 go outside, that is not only unlawful, but it's also
2 called diversion.

3 Now, it makes common sense that when you've
4 got a product that people are addicted to, and people
14:13:16 5 need it and their bodies crave it and they're willing to
6 do outrageous things to meet the fix, it's not surprising
7 that there's room for people to profit from those folks,
8 sell it when maybe they shouldn't, turn a blind eye to
9 what they ought to be focusing on.

14:13:48 10 But the law says that the registrants, the
11 people within that circle, have a responsibility. They
12 have a responsibility to prevent diversion, to stop that
13 from happening, to break it apart, and they do that by
14 following the rules. The rules are written so that
14:14:08 15 diversion will not happen.

16 So, for example, I told you about the
17 middle people, the distributors. Those distributors,
18 they are supposed to be monitoring how many pills they
19 are shipping to certain stores and how often they ship
14:14:26 20 them.

21 They're supposed to be monitoring for
22 suspicious orders, which might mean an order of an
23 unusual size. I need, you know, an extra case of Oxy
24 30s. It might mean a suspicious or unusual pattern where
14:14:47 25 every Tuesday, all of a sudden, they need the new drugs.

1 It might be a frequency. They used to get
2 them once a month, now they're getting them every third
3 day.

4 There's more, but the distributors, the
14:15:05 5 middle people, taking from the manufacturers, giving it
6 to the pharmacies, those middle folks are supposed to be
7 monitoring for this.

8 By the way, for certain periods of time,
9 these defendants in this case were distributors to
14:15:20 10 themselves as well as pharmacies. That's one reason I go
11 into this explanation.

12 Now, Joe Rannazzisi, who is going to be
13 here to testify, is going to be able to talk to you about
14 the way he pursued folks and informed folks about these
14:15:41 15 responsibilities so I used for an example here a copy of
16 the letter that was sent to Walgreen's in 2007. And in
17 it, Joe Ran makes it clear that the law, the Controlled
18 Substances Act, requires that a distributor, that middle
19 person, design and operate a system to disclose to the
14:16:08 20 registrant suspicious orders.

21 They've got to design a system and they
22 have to operate it. This is going to become relevant in
23 a little bit.

24 He also told them the regulation also
14:16:23 25 requires that the registrant inform their local DEA

1 Division Office if there is a suspicious order.

2 Then he goes on to say that they need to do
3 an independent analysis of that suspicious order before
4 they sell it. Doesn't do any good to check it out after
14:16:49 5 you throw the pills out on the street or to the
6 pharmacies. But this is what the regulation says.

7 The last thing I'll put out at this point
8 in time, the regulation specifically states suspicious
9 orders include orders of an unusual size, orders
14:17:05 10 deviating substantially from a normal pattern, orders of
11 an unusual frequency. These, it doesn't take all of
12 them, they're disjunctive, could be one, could be the
13 other, doesn't even have to be those, there could be
14 more. But that's what the distributors must do; they
14:17:22 15 must develop and operate a system to report suspicious
16 orders, those being orders of an unusual size, frequency,
17 and pattern.

18 And they need to decline to ship until a
19 determination that there is no diversion.

14:17:37 20 Now, you'll notice I left number two out.
21 It's coming. I just didn't order them well when I got my
22 PowerPoint ready to give you.

23 So put number two up there in your brain.
24 "Identifying suspicious orders." You've got to develop a
14:17:54 25 system to identify these orders, to report these orders,

1 and then decline to ship until the determination is made
2 that there's no diversion because that's the point of the
3 closed loop.

4 You want to make sure that the people
14:18:08 5 bringing prescriptions aren't bringing fake ones. You
6 want to make sure that you're not supplying pharmacies
7 with way too many pills than they should reasonably need.

8 Now, let me talk to you about the
9 pharmacies.

14:18:26 10 Those middle people are called
11 distributors. Pharmacies are called dispensers. They
12 dispense the medicine.

13 So dispensers are known as, not surprising
14 when you look at this picture, the last line of defense
14:18:46 15 to prevent diversion because these are the people who are
16 putting the pills onto the streets.

17 And so the dispenser has obligations as
18 well. The dispenser's obligations include providing
19 effective controls and procedures to guard against
14:19:09 20 diversion. In other words, they've got to be effective
21 at keeping the drugs from going where the drugs shouldn't
22 be going.

23 Don't let someone come in with three
24 different prescriptions from three different doctors for
14:19:24 25 the same medicine. Don't let someone come in if he's a

1 fellow and he's got a prescription for pain medicine from
2 a gynecologist. Don't let prescriptions come in from
3 someone whose DEA license has been revoked.

4 Be on your guard. Be attentive. Provide
14:19:52 5 effective controls.

6 I think the evidence is going to show that
7 they also have to exercise, and this is the legal word,
8 "corresponding responsibility." Think about that for a
9 moment. It's corresponding responsibility to a doctor.

14:20:08 10 So you're a doctor, you're not supposed to write these
11 prescriptions unless it's legit, but then the pharmacist
12 is not supposed to do fill them unless it's legit.

13 Pharmacists go to years and years of school
14 to become a doctor of pharmacy. They study more drug
14:20:32 15 interaction than doctors do in medical school. Doctors
16 go to medical school. They're learning how to deliver
17 babies, how to hack off a limb, how to figure out if
18 someone has cancer. They've got the whole broad
19 spectrum.

14:20:44 20 Pharmacists, they're zeroed in on drugs.
21 And they have to exercise a corresponding responsibility
22 to the doctors. That, by the way, makes a lot of sense
23 because there are some things doctors don't see.

24 If -- I won't use you, Ms. Fleming, but if
14:21:03 25 Ms. -- or I'm using you. If Ms. Fleming comes into one

1 doctor, she can explain her condition but if Ms. Fleming
2 then goes to a second doctor, he doesn't know she may not
3 have already gone to a first.

4 If she goes to a third doctor, they don't
14:21:19 5 know. She could walk out with three prescriptions for
6 the same malady. But the pharmacist ought to know who's
7 filling those prescriptions.

8 So we'll talk about that some more in a
9 minute when we get to the episodes, but the pharmacist,
14:21:34 10 the last thing I put up here, the dispensers, they need
11 to provide suitable tools to pharmacists.

12 For example, you're going to hear about red
13 flags and how important it is to educate the pharmacists
14 about red flags. Red flags is something that says,
14:21:51 15 "Whoa, trouble here. Warning, warning."

16 And so the pharmacists need the tools for
17 that. You'll hear about that.

18 Okay. Now, you've heard about the show.
19 Let's watch it.

14:22:07 20 So let me tell you about it. Let me tell
21 you what the evidence is going to show, and what I've
22 tried to do is I think put it into nine episodes is what
23 I wound up with and here's your binge watching. And His
24 Honor has told me I'm taking a break at 3:00 o'clock so
14:22:25 25 I'm good for about 35, 36 more minutes so if you'll bear

1 with me, please. And you all are being so patient.

2 Thank you.

3 So here it is. The TV show is Opioid
4 Epidemic, and it's one that has been raging across this
14:22:38 5 country. It's not simply in Ohio. It's not simply in
6 your counties, ladies. It's raging across the country.

7 These are opioid sales in the green line,
8 from 1999 to 2010.

9 Now, those, the years we're concerned about
14:22:52 10 really are the years going back to 19 -- the late 90s
11 into the 2000s. Up to 2010, '11, '12, '13, '14, you'll
12 hear how the pharmacists -- pharmacies, the businesses,
13 have been trying to get their acts together some, and
14 you'll hear about that. But we're looking at where this
14:23:13 15 all really started snowballing.

16 And so you've got the opioid deaths. Those
17 are that red line, and they've just gone up as the
18 prescribing has. And so has opioid treatment, which is
19 the blue line.

14:23:29 20 So this is the opioid epidemic. Episode
21 number one is going to be meet the characters. So this
22 is who we've got in this case. We've got the national
23 pharmacy, CVS. And CVS owns thousands and thousands of
24 pharmacies all around the United States. They've got
14:23:48 25 legal departments, they've got regulation departments,

1 they've got marketing departments, they've got
2 relationships with manufacturers, distributors.

3 And you'll hear all about them during the
4 trial. The first witness I'm calling works for CVS.

14:24:05 5 Now, another party here is, aside from CVS,
6 we've got Walgreen's. Walgreen's is right here on this
7 table behind me. And they, of course, are a big national
8 pharmacy in the United States we're looking at. We're
9 not looking at boots or the foreign issues but we're
14:24:29 10 looking here in the United States at their Walgreen
11 stores.

12 By the way, I shop at Walgreen's and I shop
13 at CVS. Not a ton, but I do. And I'm not holding
14 pharmacists, I'm not pointing my finger at the
14:24:50 15 pharmacists in this case. I'm pointing my finger at the
16 business.

17 So we've got a real nice pharmacist from
18 Giant Eagle, for example, and she just seems to be so
19 nice and polite as she stood up and greeted us all. I'm
14:25:06 20 not accusing her or any individual pharmacist per se of
21 causing this problem. I'm after the businesses, I'm
22 after the big business that's behind it that empowers or
23 fails to empower their pharmacists; that trains or fails
24 to train or wrongly trains their pharmacists, that adopt
14:25:27 25 the policies that follow the law or don't follow the law.

1 And that's what you're going to hear about.

2 Walmart, of course Walmart is well-known
3 worldwide, a big company. You'll hear about Walmart in
4 this case. There are some Walmart stores. Those are the
14:25:41 5 three national retailers, as the Judge said. Then
6 there's Giant Eagle, which is the local one. And I'm
7 from Texas. I don't -- I don't buy groceries here really
8 but I'm sure it's probably a great place to go and buy a
9 jar of peanut butter or something.

14:25:57 10 I'm not looking at their groceries. I'm
11 not looking at how nice they are. They've been around
12 for four generations. I'm not looking at that. I'm just
13 looking at when they were choosing to make money by
14 selling these registered drugs, did they do it right or
14:26:16 15 not.

16 So you'll hear from them, I'm sure, that
17 they're a wonderful grocery store, that invites you to
18 come in and they'll smile and greet you and they'll bring
19 a nice pharmacist and they're wonderful people. I'm not
14:26:31 20 fussing any of that.

21 I want to know, in the home office, how are
22 they conducting their business and did they contribute in
23 a significant way to the nuisance that's there, the legal
24 nuisance.

14:26:43 25 So all of that will be measured against

1 this idea they are part of that closed system, and I told
2 you they're actually distributors and dispensers. So
3 dispensers, CVS, you could go get your prescription
4 filled for Oxycodone. You could go to Walgreen's and get
14:27:01 5 it filled, Walmart and get it filled, Giant Eagle and get
6 it filled. That's -- they were making money selling the
7 drugs.

8 And there are times where people need the
9 drugs and ought to be able to get them. I'm not fussing
14:27:14 10 that.

11 Historically, there are three big
12 distributors. In fact, McKesson, Cardinal Health, and
13 AmerisourceBergen are called the big three. And McKesson
14 had a good bit of it -- or, no, AmerisourceBergen had a
14:27:32 15 good bit of it owned for a while at least by Walgreen's,
16 not really getting into that kind of mess, but the big
17 three are well-known distributors. But there came a time
18 where these pharmacies that we've got in here decided
19 that instead of fully relying on others, they themselves
14:27:51 20 would take some of the role of distributor.

21 And so Walmart, CVS, Walgreen's, Giant
22 Eagle, for a period of time, they're distributing as well
23 as dispensing so they had the legal obligations of both.
24 And I'll explain that to you. Remember, the distributors
14:28:08 25 have to develop a system to identify suspicious orders,

1 report the suspicious orders, and then decline to ship
2 until they are determining through due diligence that
3 there's no diversion.

4 And then the dispensers, what do they do,
14:28:25 5 they're that last line of defense, have to have effective
6 controls and procedures, exercise corresponding
7 responsibility, and the businesses need to provide the
8 tools. And that's what we've got.

9 Now, the last two meet the characters, the
14:28:41 10 last two characters you need to know about are Lake
11 County. I tried to figure out Lake County. I think one
12 or two of you may live in Lake County. I did not know,
13 until this case, President Garfield used to live in Lake
14 County. But evidently stand on his porch and give
14:28:57 15 speeches.

16 You'll hear about Trumbull County. I tried
17 to find what President came from Trumbull County. I
18 can't find one. But the front man for the food fighters
19 came from Trumbull County so I threw him on there. But
14:29:16 20 you're going to hear from them. Ms. Fraser will take the
21 stand and she's the Lake County ADAM's Board Executive
22 Director. She's the state board member for the Mental
23 Health and Advocacy Coalition and she'll talk to you
24 about Lake County and the effects it's had on Lake
14:29:36 25 County.

1 The effects are tremendous. It's not only
2 costing the lives of people but it affects children who
3 are born to addicted moms. It affects the court system.
4 It affects the county budget in a lot of different ways
14:29:54 5 that you'll hear about from not only Ms. Fraser but I'll
6 probably call at least one or two other county witnesses
7 if time allows it.

8 You'll hear from the Trumbull County Mental
9 Health and Recovery Board Executive Director,
14:30:08 10 Ms. Caraway. You should have two Rs in your name, April,
11 and I apologize about that. It's only one R? I'm glad I
12 got that right.

13 (Laughter.)

14 MR. LANIER: Anyway, that was a great
14:30:20 15 error.

16 She's the Executive Director. She's also a
17 member of the Trumbull County Opiate Death Review
18 Committee. She'll tell you about that. She'll tell you
19 about being a founding member for the Alliance For
14:30:33 20 Substance Abuse Prevention.

21 I do expect to call also the commander from
22 the Sheriff's Office, Toni Villanueva. Captain
23 Villanueva is not only a commander but he headed up the
24 multi-agency, multi-jurisdictional law enforcement task
14:30:52 25 force.

1 Time permitting and His Honor allowing, I
2 will also be calling Nicole McCallion. Nicole is a
3 foster parent, an Lake County resident who herself is a
4 foster parent and then trains other foster parents who
14:31:09 5 are having to take in some of these opiate babies. And
6 she'll talk about the effects of the opiate epidemic on
7 children. So those are the characters.

8 So let's get to the next episode because we
9 are after all binge watching. Next episode is Failing At
14:31:24 10 the Job.

11 See, now, remember, and I'm going to do
12 this rapidly but you've got to keep this in your brain,
13 the distributors have to develop and operate a system to
14 identify suspicious orders and report those before they
14:31:38 15 dispense, before they ship. The dispensers, remember,
16 last line of defense, and they have to provide effective
17 controls and procedures to guard against diversion,
18 exercise corresponding responsibility to the doctors and
19 provide suitable tools. And this becomes important
14:31:56 20 because one of the witnesses you'll hear within the first
21 two weeks is Dr. Carmen Catizone. He's a pharmacist; a
22 doctor at that time.

23 He's the former head of the National
24 Association of Boards of Pharmacy. It's a big national
14:32:12 25 group that's really tried to get the pharmacies in line

1 on this stuff. He's going to testify about how companies
2 failed to regard red flags. Red flags is a language used
3 by the DEA, used by industry, it's used by lots of folks.
4 A red flag means, "Stop. Don't dispense until you figure
14:32:38 5 out if it's correct."

6 And so he's going to talk about how
7 companies failed, how these companies failed regarding
8 red flags and the system to detect them and what to do
9 when you encounter them.

14:32:55 10 And that's what he's going to be talking
11 about.

12 He's going to say that defendants should
13 have had in place from the very beginning, not after they
14 get sued, not after they get written up, but from the
14:33:11 15 very beginning, they're supposed to have red flag
16 policies and they didn't.

17 From the very beginning, they should have
18 trained their pharmacists on red flags and they didn't.
19 From the very beginning, they should have given the
14:33:25 20 pharmacists the tools they need, and they didn't.

21 And we've done an analysis of these red
22 flags, and some of the red flags you're going to hear
23 about, let me put them up here for you. One of the ones
24 is doctor-shopping. If you determined, if you have a
14:33:48 25 computer that will tell you if someone's been filling a

1 prescription for the same thing somewhere else from a
2 different doctor, you don't fill it. But you've got to
3 have the system to check.

4 CVS has to be willing to enter the data
14:34:05 5 into the system, and have their computers drawn up in
6 such a way that they're able to detect if someone's
7 doctor shopping.

8 That's the responsibility of the company,
9 of the business. It's giving the tools to the
14:34:23 10 pharmacists.

11 If someone is getting more drugs than the
12 days they're supposed to be taking it, that should tell
13 you something. That's a red flag.

14 In other words, if I'm getting drugs for
14:34:44 15 120 days that I'm supposed to be taking it for a hundred
16 days, there's a red flag that should go up. Now, the red
17 flag doesn't mean you're not allowed to fill it. A red
18 flag means, "Time out. I need to talk to you about this.
19 Can you tell me why you're getting this? Can you tell me
14:35:01 20 who the doctor is?" If you've got two doctors writing
21 the same prescription, it's calling up the doctor saying,
22 "Did you know doctor so and so wrote the same
23 prescription just an hour earlier? Did you do that on
24 purpose or is that something you just didn't know and
14:35:17 25 we're seeing as a pharmacy?" Or, "He got this

1 prescription filled three days ago and now he has another
2 one. Is that on purpose? Did he lose the first drugs?"

3 The prescribing patterns. 99 percent of
4 doctors, I think, are marvelous doctors on this issue.

14:35:35 5 The problem is the one percenters. The one percenters
6 who will write a prescription for just about anybody who
7 wants one. They're call pill mill doctors. And when the
8 DEA finds them, they'll work to revoke their
9 registration.

14:35:55 10 Some of them wind up doing prison time for
11 it. And by the way, when I said there are lots of folks
12 at fault here, these doctors they are in that line. They
13 are a significant part of the problem.

14 But how's the pharmacy going to know
14:36:11 15 whether or not to fill that prescription, do the
16 corresponding responsibility? They've got to have a
17 system to help them identify bad prescribing patterns.

18 You're going to hear about drug cocktails.
19 You shouldn't -- evidently it is a huge red flag if you
14:36:31 20 take an opiate and a Benzodiazepine, a Benzo drug. If
21 you take those two together, it's like, (gesture) and
22 that should be a red flag to a pharmacist.

23 Those doctors shouldn't be writing those
24 two drugs to go together, and that's been known, I think
14:36:51 25 the first articles on that came out in 2007. Certainly

1 by 2010. Of course the pharmacies need to have a system
2 so they can see if this person filled a Benzo
3 prescription the day or week before.

4 Another red flag, cash. If you come in and
14:37:11 5 you're buying an expensive prescription and you're paying
6 cash, you don't have insurance, doesn't mean it's not
7 legit. It may very well be. But it's a red flag and the
8 pharmacist should stop and ask you questions and
9 determine it's not diversion. That's their job. So this
14:37:33 10 is episode two, Failing At the Job.

11 Let me give you some of the reasons why I
12 say this is Failing At the Job. I will grab some of
13 these documents here and show you exactly what I'm
14 talking about.

14:37:57 15 So one of the documents I've got is
16 labeled -- Your Honor, for the record it's Plaintiffs'
17 Exhibit 28124, and this is the Controlled Substances Act
18 itself, and you're going to hear about the Controlled
19 Substances Act, that the whole reason it was written is
14:38:13 20 because of a concern in part on diversion.

21 I won't take the time to put that one up
22 yet, but you'll hear about it and when you do, I want you
23 to remember.

24 Now, these companies are going to stand up
14:38:26 25 here and give an opening statement, and they're going to

1 say they did nothing wrong. They're going to say, "We
2 are not any part of the problem." They're going to blame
3 everybody else but themselves.

4 But I'm going to bring you evidence that
14:38:41 5 they were part of the problem.

6 And so, for example, I'm going to bring you
7 Plaintiffs' Exhibit 8804. Mr. Wilson, can you give me,
8 please, the IP? Thank you.

9 8804, and this is a document that -- let's
14:39:00 10 see if I can get it where you can see it -- this is an
11 order to show cause that was put out by the U.S.
12 Department of Justice Drug Enforcement Administration.
13 Oops, there we go.

14 U.S. Department of Justice Drug Enforcement
14:39:18 15 Administration, and it's an order to show cause. "Notice
16 is hereby given to inform Walgreen Corporation of the
17 immediate suspension of," their registration because the
18 registration, "Constitutes an imminent danger to the
19 public health and safety."

14:39:37 20 This is concerning a Walgreen's that was in
21 Arlington or they're asking them but it's a Walgreen's
22 that was in Florida. Walgreen's Jupiter, Florida
23 Distribution Center is the one that it's concerned about.

24 And what they said is that this center did
14:39:56 25 not have -- it's interesting, look at number four.

1 "Since 2009, Walgreen's' Jupiter, Florida Distribution
2 Center has been the single largest distributor of
3 Oxycodone products in Florida."

4 You can go up before that.

14:40:16 5 "Since at least 2009, the state of Florida
6 has been the epicenter of a notorious well-documented
7 epidemic of prescription drug abuse."

8 You're going to hear testimony about how
9 there was a drug cartel in Ohio going down to Florida to
14:40:32 10 get their drugs and bring them back up here to sell.

11 And Walgreen's is doing this, and
12 Walgreen's is doing it without a proper program in place.
13 The DEA continues to say, Paragraph 7, "Walgreen's failed
14 to detect and report suspicious orders by its pharmacy
14:40:58 15 customers," and quotes that language. I've now quoted it
16 so much, you'll be able to quote it soon, "Distributors
17 are required to design and operate a system to disclose
18 to the registrant suspicious orders of controlled
19 substances, orders of unusual size, deviating from a
14:41:16 20 normal pattern, and orders of unusual frequency."

21 And not only did Walgreen's fail to detect
22 and report this but Walgreen's knew or should have known
23 about their obligation to do it. It's been spelled out
24 in detail in three letters from the DEA's deputy
14:41:37 25 assistant administrator.

1 So I'm going to be giving you evidence that
2 they failed to do this.

3 I'm going to be giving you evidence that
4 they -- I'll give you another one. It's Plaintiffs'
14:41:51 5 Exhibit 57. This is not the DEA talking. This is
6 Walgreen's doing their own internal report.

7 And in 2008, in their internal report, the
8 compliance for the Perrysburg Distribution Center, that's
9 the one that supplied their Ohio stores, the compliance
14:42:11 10 report says the following:

11 Internal investigation by Walgreen's
12 says -- if I can make this a little bigger -- "Walgreen's
13 is required to have a process to disclose to the DEA any
14 suspicious orders of controlled drugs that deviate from
14:42:31 15 the normal size, pattern and frequency."

16 Look at the risk here. "Walgreen's is not,
17 not verifying the legitimacy of suspicious orders which
18 could lead to the fulfillment of an illicit order."

19 The company knew from its own internal
14:42:53 20 audits it wasn't doing it. The DEA would send out
21 letters saying this. It's up to CVS. We've got the CVS
22 Plaintiffs' Exhibit 10064, CVS says, letter from between
23 the Department of Justice, CVS Indiana, "Investigators
24 from the DEA Indianapolis District Office," that's one
14:43:20 25 that services this region as well, "initiated a

1 regulatory investigation at CVS Indiana. As a result the
2 following violation was identified." They failed to
3 design and maintain a system to detect suspicious and
4 report suspicious orders.

14:43:36 5 This is, this is what these companies have
6 failed to do. And it's because of this failure that we've
7 got a number of different understandings.

8 Now, please understand, we're not able to
9 verify every store, every Distribution Center. That's
14:44:03 10 not the way the DEA works. It's kind of like a police
11 officer catching folks for speeding; you don't catch
12 everyone speeding. They catch the ones that are speeding
13 when you're there.

14 But if you find that, you're going to find
14:44:17 15 that the companies were ignoring the red flags they
16 should have followed. CVS is subject to a situation in
17 Florida. Again, Florida was where all this stuff was
18 feeding the east coast certainly, and there's a decision
19 that was handed out. It's going to be hard to read
14:44:38 20 because the print is so small, that if I put it on the
21 screen, you still can't read it so I'm just going to have
22 to tell you that you'll hear about this because it's the
23 *Holiday* case is the name of it, from Holiday, Florida,
24 and in this, an Administrative Law Judge found credible a
14:45:05 25 professor's testimony that controlled substances are

1 high-alert drugs, that drugs such as opioids and Benzos
2 and other depressant drugs require the highest level of
3 scrutiny, that in pharmacy practice, there are various
4 red flags which cause a high level of concern that might
14:45:23 5 cause a pharmacist not to fill a prescription or to take
6 other kinds of actions, and they'll talk about all of
7 that but ultimately, the DEA was going to shut down these
8 CVS stores.

9 You'll hear tales about how they were
14:45:37 10 having to be real careful because they'd get their
11 shipment in on a Tuesday, and they wouldn't have enough
12 drugs to last until the next shipment came in, that
13 people had figured out the drugs came in on a Tuesday,
14 and that's when they'd line up to take the drugs.

14:45:55 15 You'll hear that these Florida things are
16 no lark. This is a PowerPoint that was put together by
17 Joe Ran, and he actually presented this PowerPoint. See
18 if I can get the whole thing on the screen.

19 He presented this PowerPoint in 2015 when
14:46:10 20 Joe Ran was the Deputy Assistant Administrator, the
21 Office of Diversion Control for the Drug Enforcement
22 Administration, and here's what he called it in this:
23 The Florida Migration.

24 He said, "The vast majority of patients
14:46:27 25 visiting Florida's pain clinics come from out of state.

1 Out of state, including places like Ohio."

2 He goes on to put a map out of the
3 migration of pain clinics and talked about the pills from
4 Florida into Georgia, into Tennessee, Kentucky, into Ohio
14:46:52 5 as they made their way over to Missouri.

6 You're not only going to get this from Joe
7 Ran and his presentation, but this was known by the
8 pharmacy companies. They knew this stuff was going on.

9 CVS has a document that's Plaintiffs'
14:47:10 10 Exhibit 11918, and in that document, it's a PowerPoint
11 presentation but they put that migration out of Florida
12 slide that they got from McKesson that shows the same
13 migration pattern.

14 And this is back in 2014.

14:47:29 15 So they knew this was going on. And they
16 didn't only know it this way, you can go all the way back
17 to 2009. I want to show you a Walmart document that
18 you'll hear about at trial. It's Plaintiffs' 26699 and
19 it's a 2005 document that's got a whole section on
14:47:49 20 Florida.

21 And this whole section on Florida, with the
22 pills spelling the word "Help" out to the side, talked
23 about how the top 35 dispensing practitioners of
24 OxyContin nationwide were located in Florida; 25 within
14:48:10 25 Broward County, that according to the DEA ARCOS records

1 the Florida physicians dispense five times more Oxycodone
2 than the national average. Florida has increasingly
3 become a source state for illegally diverted medications
4 for residents in Kentucky, Tennessee, Ohio,
14:48:31 5 Massachusetts, New York and other states. Again, Ohio.

6 That's the way it was working, and they
7 knew that to be the case.

8 So you'll hear this testimony. You'll see
9 these documents. They'll provide you with a good
14:48:48 10 understanding of why the Government has dealt with each
11 of these in some ways rather severely.

12 You will hear about settlement agreements
13 these defendants entered into with the Government.
14 You'll hear about Plaintiffs' Exhibit 8954, which is a
14:49:12 15 settlement agreement that was entered into between CVS
16 and the Government.

17 You'll hear that the policies that were
18 allowing this to happen in Florida not only affected Ohio
19 because of the Florida migration, but these were national
14:49:29 20 policies. This is the way they were doing business all
21 over the U.S.

22 Florida is where they got stung, but they
23 were doing this everywhere. So you'll read about how
24 CVS, in this actual document, acknowledges that they do
14:49:47 25 have a corresponding responsibility to dispense only

1 prescriptions issued for a legitimate medical purpose.

2 They knew they had that responsibility and
3 they also admitted there, although not here, to failing.
4 They admitted in Subparagraph K, they acknowledged that
14:50:09 5 certain CVS Pharmacy retailers did dispense controlled
6 substances in a manner not fully consistent with their
7 compliance obligations under that law, the CSA.

8 And I'd love to say that that only happened
9 once, but such is not the case.

14:50:27 10 And I don't know what all we'll get into
11 with you but I hope to also get into Plaintiffs' Exhibit
12 8955, this is another settlement, where CVS entered into
13 another agreement to settle with the United States
14 Government. And this one for Rhode Island. And in this
14:50:48 15 one, they acknowledged again that their CVS pharmacy
16 retail stores in Maryland did dispense certain controlled
17 substances in a manner not fully consistent with their
18 compliance obligations by not conducting corresponding
19 responsibility between 2008 and 2012 when dispensing
14:51:10 20 certain controlled substances in some instances.

21 So you're going to get to hear about these
22 things. You're going to get to hear the excuses. But I
23 don't think you're going to find that the lawyers will
24 ever accept responsibility.

14:51:28 25 And that's the problem we've got. So where

1 does that leave us? You know, I can do more. I've just
2 pulled those out. Walgreen's, they've got the same
3 problem, Plaintiffs' Exhibit 15 is a settlement between
4 Walgreen's where Walgreen's admitted, if you go to
14:51:49 5 Paragraph 6, at the end of the stipulation, thank you,
6 the stipulation and agreement, Walgreen's acknowledges
7 suspicious order reporting for distribution to certain
8 pharmacies did not meet the standards identified by the
9 DEA in three letters from the DEA's Deputy Assistant
14:52:11 10 Administrator that were sent to every registered
11 manufacturer and distributor, including Walgreen's in
12 2006, '7 and '7.

13 Furthermore Walgreen's acknowledges that
14 certain Walgreen's retail pharmacies did on some
14:52:25 15 occasions dispense certain controlled substances in a
16 manner not fully consistent with its compliance
17 obligations.

18 And you're going to hear about this from
19 each of these folks and we'll put on the evidence and I
14:52:37 20 think it's going to be pretty compelling that if we go
21 back to the computer, Juan, thank you, that they failed
22 at the job. That's not to say they didn't do something;
23 they did something but it was too little too late.

24 I don't know how many of you garden. We do
14:52:55 25 some gardening in Texas, and we have some weeds that are

1 really pernicious, they're really, really bad, and if you
2 get them in your garden, you don't notice it immediately
3 but once they take over, I mean it's like you get -- we
4 call it nut grass. I'm sure it's got some fancy name.
14:53:16 5 You get nut grass in your garden, you're like gone for
6 because it spreads by these nuts down under the ground
7 with these real thin little tendrils that grow from one
8 nut to another and you can pull all day long, if you
9 don't get the nut, it just comes back up stronger and
14:53:32 10 just spreads out more. It's really, really bad.

11 If you've got a nut-grass-ridden garden or
12 you've got an overgrown garden, the odds are it didn't
13 happen yesterday.

14 These are problems that have been long
14:53:43 15 growing. The problems folks face today is not something
16 that happened because of bad policies yesterday. The bad
17 policies go back into the 2000s; 1999 to 2010, '11, '12,
18 '13, '14. And the problem with this is you get a lot of
19 people addicted to some of these opiates that are
14:54:11 20 prescription opiates, and then all of a sudden, you cut
21 off the prescriptions, and that availability is not on
22 the street, and they've got an opiate addiction. So at
23 that point in time, they've got to seek out the illegal
24 opiates.

14:54:26 25 And you're actually seeing a rise in heroin

1 and Fentanyl deaths now from street Fentanyl and heroin
2 because now the supply of the overabundance of
3 prescription opiates is being cut back. This is what is
4 a classic snowball effect.

14:54:43 5 It's that cartoon, I looked for it, I
6 couldn't find it, but I remember it as a kid, I don't
7 think I was dreaming it, but it was a snowball at the top
8 of a hill that starts rolling down and as it rolls down
9 it picks up skiers and you can see their skis, you know,
14:54:57 10 sticking out of the snowball as the snowball gets bigger
11 and bigger and then down at the end, it hits the village
12 at the end.

13 This problem started a long time ago and
14 it's snowballed. It's grown. And I'll tell you in some
14:55:12 15 ways, COVID made it worse because people are stuck at
16 home and addiction issues got worse for a lot of people
17 during the COVID problem.

18 I think a lot of what happened here is
19 well-explained through screens. So I'm going to, if the
14:55:38 20 Court would allow me to show you this, I brought some
21 screens here. If that breaks, we're in really bad
22 trouble. Can you carefully -- thank you, sweetie.

23 Your Honor, I've got a towel here because I
24 don't want to mess up your courtroom.

14:55:55 25 THE COURT: Okay.

1 MR. LANIER: Thank you.

2 So these are screens. You can use them for
3 cooking, but they're kind of big to use them for cooking.
4 You can use them for gardening to screen different things
14:56:11 5 out and soil. Heavens, maybe you can use them for gold.
6 I don't know. But they come with different sized holes
7 in them. And the tighter the screen, the more careful
8 the screening process and you'll let less things through
9 that shouldn't get through.

14:56:30 10 You can get screens with really big holes,
11 you know? And so I was -- I was playing around with this
12 trying to figure out a good way to illustrate what the
13 pharmacies need to do with screens, and I thought one way
14 I could do that would be to take, take this screen, and I
14:56:57 15 took some flour -- thank you, Rachel -- I took some flour
16 and I buried within it red candy, Red Hots and -- oh, I
17 got Red Hots in there -- I got some red Nerds, I just
18 went red, but if I wanted the flour, I got to screen out
19 the red, like a pharmacy is supposed to screen out
14:57:22 20 through red flags, bad prescriptions.

21 It doesn't mean everyone that's red is bad
22 but the pharmacies are supposed to.

23 So if you took this, if I'm using screens
24 that have way too big of holes, I can pour it in but
14:57:43 25 you're going to find that a lot of the Red Hots make it

1 through. And almost all the Nerds. A couple Red Hots
2 got stuck, but not many.

3 So you can see that this screen was totally
4 ineffective because it didn't screen out the bad stuff.

14:58:00 5 And this is the way the pharmacies started.
6 Their screens, were totally ineffective. They let
7 everything through. They didn't -- they just pretended
8 that they're a vending machine where if someone showed a
9 prescription and stuck in the money, they dispensed the
14:58:23 10 medicine, when the law says they're not supposed to be
11 that way. The law says they're supposed to be a tight
12 screen.

13 So what did they do? They got in trouble.
14 CVS got in trouble. They tightened the screen up a
14:58:36 15 little bit. You'll hear about some of them being under a
16 watchful eye by the DEA for a period of time where the
17 DEA was really focused on them and they cleaned up their
18 act for a while, and it will help them a lot in here they
19 think because they will show you, look, here was our
14:58:51 20 great policy. Well, yeah, that's when someone's looking.

21 They tightened the holes a little bit and
22 it will catch some, but there's -- even though you catch
23 some, there's still a lot that you miss.

24 And so you'll hear about those policies.

14:59:08 25 Ultimately what you're going to find out is

1 that the law says the screen is supposed to be plenty
2 tight. That means that it's not always going to catch
3 everything, and that means it's going to take some time
4 with each prescription. Yes, we recognize time is money,
14:59:27 5 but if you've got a good screen that you can sit there
6 and take the time, you can sift through and let the good
7 prescriptions through and keep the bad prescriptions out.

8 And that's what the law said they're
9 supposed to do. The problem is time-wise they don't want
14:59:51 10 you to spend -- okay, I saw that. Yeah, okay, it's a
11 skeleton in a chair. I didn't make this up. This is
12 actually one of their documents. This is a Walgreen's
13 document.

14 Because they figured out quickly that they
15:00:04 15 want to fill your prescription fast enough that you don't
16 leave the store and come back to get it because if you
17 leave the store and come back to get it, you don't shop.
18 But if they can fill it within 10, 15 minutes, you'll
19 spend that time shopping and you'll buy more stuff
15:00:22 20 because you'll just wait for it.

21 So they didn't have enough pharmacists
22 hired to be able to do the screening process that takes
23 some time, and I'll talk more about that after the break,
24 Your Honor, but you asked me to stop at 3:00 and I think
15:00:38 25 I --

1 THE COURT: Good time to stop?

2 All right. Ladies and gentlemen, we'll
3 take our mid-afternoon break, 15 minutes, and then we'll
4 pick up with the balance of plaintiffs' opening.

15:00:50 5 (Recess taken.)

6 THE COURT: Okay. Please be seated.

7 And, Mr. Lanier, you may continue.

8 MR. LANIER: Thank you, Your Honor.

9 May it please the Court.

15:20:50 10 So, ladies and gentlemen, I hope you got a
11 good stretch in, got some caffeine. I'm raring to go
12 through the mid afternoon.

13 You know, there are aspects of this world
14 that you really don't know, I didn't know I should say,
15:21:14 15 until I got into this case. And a prime example is the
16 evidence that you're going to hear about the way they
17 figure out how long they want you to wait.

18 They don't want you to wait too long.
19 You'll either go take the business somewhere else and
15:21:36 20 you'll leave and get your prescription later so they
21 don't want to give it to you immediately because they
22 want you to have time to shop, and they've figured out
23 the pharmacy is always going to be at the back of the
24 store by and large because that way, you walk through
15:21:50 25 everything to get to it when you go there.

1 And that's okay. I mean, business exists
2 to do well, and I'm not fussing that, but it's
3 fascinating to see these metrics. And so the PowerPoint
4 that I drew that from is a Walgreen's PowerPoint in 2016.
15:22:14 5 And, Ms. Fleming, it is 17253.

6 And it's one that just really talks about
7 the problems. Now, you might say, well, the easy
8 solution to this, if you need the time to check out the
9 prescriptions to make sure they're good, and you don't
15:22:34 10 have the time because it's going to take too long, add
11 another pharmacist. Add a pharmacy tech. Technician.
12 But they don't add those if they can avoid it, because it
13 costs too much, and it's all a question of how much money
14 do they make versus how much it would cost. And so
15:23:01 15 that's what they -- that's the position, that's where
16 they get stuck.

17 So when you look at what they've done, what
18 they've done for some periods of time, it's a black hole.
19 They don't have anything really in place. They're
15:23:20 20 filling prescriptions pell-mell. I mean it's just
21 there's a void that's out there.

22 Where it comes to policies, the idea of a
23 suspicious order monitoring to design and operate a
24 system, they don't -- not gee, they sold this for a few
15:23:42 25 weeks without doing that or gee, they sold this for a few

1 months without doing that or gee, they sold this for half
2 a year. No, they went years without a program, even
3 though the law requires it.

4 You're going to hear about how they ignored
15:24:03 5 red flags like crazy. Some of their witnesses even said,
6 "I don't know what a red flag is." And I think we'll be
7 able to bring that testimony to you.

8 I'll be real interested to hear from
9 Mr. Davis, the first witness. He didn't know if there's
15:24:24 10 an epidemic or not. I hope by the time he's gotten here,
11 since I deposed him, he's learned there is an epidemic.

12 But he wouldn't even admit to that.

13 So you're going to hear all of this kind of
14 stuff, and this is the part of the case where I'm going
15:24:42 15 to hopefully be showing you that what the company did was
16 too little too late. It's like the screens, they should
17 have had the right screen from the very beginning, but
18 they only made the screen smaller and smaller when they
19 were forced and forced and forced.

15:25:05 20 I'll tell you, this was news to us. When
21 we filed this case on behalf of these counties, first
22 time around we didn't even sue the pharmacies. We didn't
23 get the documents. We didn't get the numbers. We didn't
24 see what all they had done. We didn't have all of the
15:25:26 25 migratory patterns from Florida.

1 And so once we learned those things, we
2 bring them into the case and they're hear because they
3 won't accept any responsibility.

4 And so that's what we're going to be asking
15:25:45 5 of you is to determine whether or not they have
6 significant responsibility in causing this epidemic in
7 these counties.

8 They'll say not. We think they are part of
9 the problem.

15:26:03 10 So let me get to episode number four.

11 Episode four, Where Data Makes Money.

12 Now, let's be clear, business exists unless
13 it's a nonprofit business, business exists to make
14 profits. That's good. That's the American system.

15:26:26 15 Great. I'm all for that.

16 I'm a lawyer. I own my law firm. We exist
17 to make a profit, but that doesn't mean we're not still
18 supposed to be socially responsible.

19 And the same is true with business. There
15:26:48 20 are right ways to make a profit and there are ways that
21 aren't right to make a profit.

22 So here's one of the ways they make money.
23 These stores keep track of every prescription that's
24 bought, and while they would not give that information to
15:27:11 25 their pharmacists for a long time, what they did do is

1 they sold it. This is where data kind of gets lost under
2 the dollar bill, but D-A-T-A, this is where data makes
3 money.

4 Let me tell you what they would do. You go
15:27:36 5 into a Walgreen's, CVS, and you go buy a prescription or
6 you may have one of those little cards where you do your
7 card. They keep track of everything you buy. That's why
8 they'll spew you out those big receipts that have all
9 these coupons targeted to your buying. They know exactly
15:27:59 10 what you're buying.

11 They'll keep track of it for economics
12 because they will take your prescription data, what
13 prescription you had filled, how many pills, whether or
14 not there were refills, what the dosage was, what your
15:28:21 15 Zip Code is, they'll take the information on the doctor
16 that wrote the prescription, what her DEA registration
17 number is or him, doctors, I guess either gender, what
18 hers or his is.

19 They'll take and keep track of all of that
15:28:41 20 data to sell to another company.

21 It's a vicious circle. It is -- do you
22 have a piece of paper? I can use card stock. Thank you.

23 Your Honor, can I go to the Elmo, please?

24 Here's the way it went down and you all
15:29:04 25 will learn throughout this trial, assuming His Honor lets

1 me draw periodically, that I am a horrible artist. Okay?
2 I cannot draw my way out of a paper sack. Don't pick me
3 for Pictionary.

4 But here's the way it will go down. You've
15:29:23 5 got the store, and the store, I'll put an Rx on because
6 they're a pharmacy. Okay. Now, this store, people go
7 into the store and they take their prescriptions and the
8 store fills the prescription.

9 And then let me make that a little bit
15:29:39 10 bigger, the store takes that information and the store
11 sells the information to a company for a long time known
12 as I.M.S, also known as Ocudea (sic), and that company
13 pays money back for the data. So this drugstore, CVS, I
14 mean makes somewhere north of \$5 million selling the
15:30:14 15 data. They even negotiate the price later on where they
16 are selling it per prescription. Wait until you hear how
17 much more they got if they sold the data after filling a
18 ninety-day opiate prescription versus a 30-day.

19 But we'll get into that evidence later.

15:30:30 20 I.M.S takes all of that data so the data is
21 going to I.M.S, while the money is going back to the
22 pharmacy.

23 And then I.M.S takes the data, and I.M.S
24 sells the data to the drug manufacturers like Perdue
15:30:57 25 Pharma, who makes the opiates, or did for quite awhile.

1 And so the drug manufacturer is going to
2 give money to I.M.S while I.M.S gives the drug
3 manufacturer your data.

4 Then you know what the drug manufacturer
15:31:23 5 does? The drug manufacturer says, "Hmm, you know some of
6 these doctors are doing a good job filling prescriptions,
7 some of them aren't. We need to send our sales force out
8 to these doctors so that our sales force will sell to the
9 doctors and convince the doctors to write more
15:31:51 10 prescriptions."

11 Write more prescriptions for the opiates.

12 So the doctors write more prescriptions.

13 And what does that mean? More patients going in to get
14 their prescriptions filled so the store winds up making
15:32:17 15 more money on the back end and that's the cycle.

16 And that's what the stores were doing.

17 Now, the best I've been able to look,
18 Walmart was a little bit different. Walmart looks to me
19 like, as I'm reading the contracts, and you'll get these,
15:32:35 20 but it looks to me like Walmart was more interested in
21 getting some of the data themselves than getting the
22 money because it wants to be able to figure out what
23 their competitors are doing.

24 And so you've got this vicious system
15:32:53 25 that's set up, and where data makes money, these pharmacy

1 companies are all over that data. They have got that.
2 In fact, let me just give you a feel for what one of
3 these contracts look like. This is Plaintiffs' Exhibit
4 23326. And this is the master data agreement. That's
15:33:18 5 all this is. This is the sale of data.

6 The master data agreement, this one dates
7 back to 1998, between CVS Pharmacy and I.M.S, the data
8 company. All right? I.M.S.

9 Now, here's what it says. It says, first
15:33:41 10 of all, CVS gets to keep all of the ownership rights in
11 the data. CVS owns their data that they're selling, but
12 they're allowing I.M.S to use it for "In development,
13 marketing, distribution of projection, marketing, sales,
14 and promotion analyses."

15:34:03 15 They know that they're taking the data and
16 it's going out there to be used in marketing and sales
17 efforts.

18 CVS knew this. And CVS even says, in
19 provisions on Page 3, that "For each data month," as long
15:34:22 20 as they give valid records where the rate is equal to or
21 exceeds 70 percent, then they get their guaranteed cash
22 payment.

23 In other words, they've got to get at least
24 70 percent of those prescriptions and that data out
15:34:35 25 there, and that's how they get their cash payment.

1 And then they also contract and pledge, CVS
2 does, that they'll use reasonable efforts and exercise
3 due diligence in collecting and transmitting complete and
4 accurate data.

15:34:55 5 So they have a contractual obligation where
6 it makes them money to do an accurate due diligent job of
7 collecting the data, getting the data right and selling
8 it because that's what they're doing at the back end.

9 And they do that, and I'm telling you, you
15:35:17 10 want to know what kind of data they can get? Let me show
11 you the data they get on Page 7 of this document.

12 They're collecting data on your
13 prescriptions, yours -- not yours, I'm not allowed to
14 talk about you as a juror -- they're collecting data on
15:35:39 15 prescriptions -- I apologize, Your Honor -- and they're
16 collecting data of a store number and that Zip Code so
17 they know where it's being bought and the prescription
18 number and what date it's being filled, and whether it
19 was new or refill, so the doctors, the salespeople can
15:35:57 20 figure out which doctors are refilling and which doctors
21 aren't, which doctors are starting new patients, which
22 doctors aren't.

23 It's got the dispensed number and the
24 product description. It's got all these other numbers,
15:36:10 25 the quantity dispensed, how many days' supply that is,

1 oh, the costs, whether or not the payment was by
2 insurance or cash, all of this data, what are red flags.
3 It's being collected, it's just being sold and not being
4 provided to their pharmacists to use so that their
15:36:31 5 pharmacists can make reasonable decisions when they
6 exercise their corresponding responsibility.

7 And they get the doctor's last name, they
8 understand how many refills are remaining, how many have
9 been authorized so that the doctors or the sales force
15:36:50 10 can ultimately go to the doctor and say "Hey, you've got
11 some prescriptions coming up. We've learned that you can
12 increase the dosage and it's going to help."

13 They get the doctor's DEA number, the
14 doctor's Zip Code, so they know if the doctor's writing
15:37:10 15 the prescription in Florida but it's being filled in
16 Ohio.

17 They get the patient's birth date, the
18 patient's sex, the patient's Zip Code. They get lots
19 more data than this. And you'll get these agreements and
15:37:32 20 you'll get to look at them and you'll hear me examine the
21 witnesses over them, and you'll see the millions and
22 millions of dollars that were made. Juan, if we go back
23 to the PowerPoint. Thank you.

24 You'll see the millions of dollars that
15:37:45 25 were made where it's profitable to collect data. Even in

1 their annual report, CVS's annual report talks about how
2 important data is. Let me see if I can blow this section
3 up a little bit. See if you can read that with me.

4 It says, "It's important to note we have
15:38:03 5 spent 16 years gathering insights and perfecting
6 ExtraCare," that's what they call it, which means that no
7 competitor can match the depth of our customer analytics.
8 They analyze everything their customer does.

9 We've leveraged our ExtraCare insights to
15:38:27 10 convert customers to categories they shop elsewhere, to
11 launch personalized digital circulars. They have so much
12 of your data, they can figure out what they want to
13 target you to buy there because you're not buying and "To
14 tailor our merchandise mix to better meet our customer
15:38:51 15 needs."

16 That's the reason we get these receipts
17 from some of these stores that have all these tailor-made
18 coupons.

19 You know, where the data makes money, data
15:39:10 20 is king or queen. But where it doesn't make money, it's
21 the next episode, it's Less Info, Not More.

22 My microphone is doing what? It went out.
23 I apologize.

24 Less info. Not more. See, it -- it wasn't
15:39:43 25 profitable to follow the law. It was not profitable to

1 follow the law.

2 The evidence is going to show you that they
3 could make money by selling. They could make money by
4 selling the pills, they could make money by selling the
15:40:01 5 data, but to put the data together simply for their
6 pharmacists to use, to reject people's purchases, to sell
7 less, not more, that doesn't make money.

8 There's something you're going to learn
9 about. We'll put it under the microscope. PDMP,
15:40:30 10 Prescription Drug Monitoring Program. I'm sorry to hit
11 you with all of this. Don't worry about it. This
12 trial's going to take awhile. I'll remind you about all
13 of this stuff. By the time of closing argument, you're
14 going to say this is where he talks about PDMPs. It will
15:40:45 15 just roll off your tongue. Won't be a problem. Okay?
16 You have to bear with me so I don't need to throw things
17 at you too much.

18 But the Prescription Drug Monitoring
19 Program, PDMP, every state in the union's got one now.
15:41:02 20 Finally. Thank you, Missouri. They were slow to come
21 around, but Ohio's had one for a long time and it's
22 changed over the years, but what the PDMP does is it
23 provides data. It provides data to the pharmacists who
24 can get on a computer and find out if someone's been
15:41:31 25 filling too many prescriptions.

1 Now, I'm not talking about something
2 internal to CVS, Giant Eagle, Walgreen's, Walmart. I'm
3 not talking about what they could have developed on their
4 own and should have developed alongside with their
15:41:47 5 programs that get you to buy diapers or whatever you're
6 there to buy or not there to buy.

7 But I'm saying that the states themselves
8 even had programs. Here's what they did. The states
9 would have a program, and it would be a computerized
15:42:07 10 program where you've got a little bit of a lag time but
11 where you're able to, every pharmacy is supposed to enter
12 into the database information about these prescriptions,
13 these controlled substances specifically here.

14 And then doctors are told before you write
15:42:26 15 a prescription, you should check the program to see if
16 this is a problem patient, to see if there's any
17 information about this situation that should keep you
18 from writing that prescription. And when she checks or
19 he checks, they find out.

15:42:42 20 But corresponding responsibility, the
21 pharmacists are supposed to check, also. Of course, that
22 requires that they have a computer that's hooked in.

23 That requires they have the time to do it.
24 That requires that they work for a business who tells
15:43:07 25 them "This is important. We have a covenant with the

1 community. We have a community obligation. We need to
2 do this right." And you need to work for that kind of a
3 business to do it.

4 Instead, what the evidence is going to be
15:43:27 5 is that these companies fought against this type of
6 information, against PDMPs. And when Ohio moved, one,
7 from being voluntary to being mandatory, they were not
8 happy. Great. Another unfunded mandate from the
9 Government.

15:43:48 10 When there was talk about a national
11 database, you know, you take counties like Lake and
12 Trumbull, each of them just one county removed from
13 Pennsylvania, so to just look at Ohio data and not look
14 at Pennsylvania data? That's not optimal. So when there
15:44:09 15 was talk about putting a national program together that
16 would catch Florida, would catch Ohio, what did the
17 companies do? They don't want to have anything to do
18 with it.

19 Now, they can't comfortably come out real
15:44:28 20 publicly and say that so instead they have other groups
21 that will vote against it and they acknowledge privately
22 in the e-mails, don't worry, our name won't be on it,
23 because this data costs them money, because it costs them
24 time.

15:44:44 25 They don't make money. So they -- they are

1 all for Less Info, Not More.

2 All right. I got to move faster. New
3 episode. Horse or Zebra? This episode came to me when I
4 was in the checkout line at the grocery store. And this
15:45:08 5 lady in front of me had enough groceries to where I was
6 standing there for a long time. And I started looking at
7 all of the magazines and stuff right there, and I see one
8 of these puzzle booklets and it had a puzzle of connect
9 the dots. These were complicated. It's not like this
15:45:31 10 one I'm about to show you. This one, Rachel found that.
11 That's an easy one. All right?

12 I'm talking really complicated like you're
13 looking at it, you have no clue what this thing is.
14 You're filling in the dots like number 179, 180, 223, and
15:45:47 15 finally you connect the dots and you have this very
16 elaborate picture.

17 Well, I used to do connect the dots when I
18 was in elementary school, and it's not hard. You just
19 follow the rule, connect the dots. If there's a dot with
15:46:06 20 a number, you connect it.

21 If you don't connect all the dots, you
22 don't get the whole picture. Now, we've got an opioid
23 epidemic. We've got what I think the law defines as a
24 nuisance, but it's cataclysmic. And we've got to figure
15:46:27 25 out the whole picture of who all's responsible, and I

1 promise you we can detail a bunch of people and I promise
2 you when they get up here, they are going to be pointing
3 the finger everywhere except themselves.

4 But you got to connect all the dots to get
15:46:49 5 the picture.

6 You can connect some of the dots, but if
7 you just connect some of the dots, you might walk away
8 thinking you've got a horse. Because you left out some
9 of the dots. You got to pick up the other dots. And
15:47:04 10 when you pick up the other dots, all of a sudden, you
11 realize you don't have a horse, you've got a zebra.

12 You can't get the whole picture and leave
13 out the pharmacies. And they're going to say, "Yeah,
14 but, look, we didn't distribute as much as these other
15:47:23 15 pharmacies did and they're not in here."

16 That's not the issue. The issue is did you
17 distribute enough to where you're a significant
18 contributor to the problem. And if you did, then you
19 need to be in here.

15:47:38 20 Every time I walk in and out of this
21 courthouse, I see that bridge and it's got, like, blue on
22 the bottom for the trestles or whatever I think they're
23 called, they're blue and I hope to heaven that those
24 folks put the steel in there to code and followed the law
15:47:57 25 because if two or three or four or five percent of those

1 trestles are bad, and that bridge goes out, no one should
2 be allowed to say, "Well, hey, I only did five percent of
3 the trestles."

4 The opioid crisis is one of connected dots,
15:48:20 5 and to get the whole picture, you need these national
6 pharmacies.

7 Now, we're unique here. We've got three
8 national pharmacies, and we've got a local pharmacy. The
9 national pharmacies in a sense have an even greater
15:48:35 10 obligation because they are so tough and big that others
11 have to compete with them. Think about Walmart for a
12 moment. Here we go, Walmart, back there. Walmart is
13 able to make money. Good. Selling automotive parts,
14 selling furniture, selling groceries, selling clothes,
15:49:02 15 selling electronics, selling sporting goods, selling gas,
16 they're able to make money selling pharmaceuticals. They
17 can make money selling all of this stuff and they're
18 leaders.

19 And if you take a mom-and-pop pharmacy, how
15:49:22 20 is a mom-and-pop pharmacy going to compete against the
21 big leader if the big leader's cutting corners? If the
22 big leader doesn't have the programs in place, if the big
23 leader's not putting enough pharmacists in to take their
24 time to screen right, how are the mom-and-pops supposed
15:49:42 25 to compete? They can't.

1 That might mean more business for the
2 Walmarts and Walgreens, the CVSes, but I'm saying that
3 they, those big national chains have an even greater
4 responsibility in the way they conduct their business.
15:50:01 5 And they are a significant part of this problem, even
6 beyond how many stores are in one county. And I'll tell
7 you why I believe that later but right now, that's the
8 Horse or Zebra episode.

9 Let me get to episode seven, the Aftermath.
15:50:19 10 The Aftermath of the actions of these companies
11 especially back in the early 2000s, mid 2000s, into the
12 2000, early teens, the aftermath is entirely foreseeable.

13 They knew this was coming. They knew that
14 this would be a problem. Plaintiffs' Trial Exhibit
15:50:50 15 19693, Juan, if we could go to this, please. This is a
16 PowerPoint by Walgreen's. It is entitled, "The Opioid
17 Crisis."

18 Now, this is their policy discussing PDMPs,
19 Prescription Drug Monitoring Programs. In the process of
15:51:12 20 this, the company recognizes, "Drug overdose deaths have
21 reached epidemic proportions in the United States."

22 "According to HHS," a Government agency,
23 "175 people die daily from the drug crisis."

24 "Since 1999, the number of American
15:51:36 25 overdose deaths involving opioids quadrupled."

1 "Approximately 6 in 10 drug overdose deaths
2 involved opioids."

3 "Prescription or synthetic opioid pain
4 relievers were implicated in more than two-thirds of
15:51:56 5 those overdose deaths."

6 "Currently, U.S. pharmacies dispense more
7 than 650,000 opioid prescriptions on an average day."

8 Walgreen's went on to say Americans consume
9 more opioids than any other country, and it's not even
15:52:23 10 close.

11 So the companies knew that this was going
12 on. They knew about the effects of abuse. This wasn't
13 something that was new to them. This is something where,
14 in 2013, Walgreen's puts out a PowerPoint that's
15:52:44 15 Plaintiffs' Exhibit 14746, "Pharmaceutical integrity."

16 And in 2013, they talked about the national
17 prescription drug epidemic, how dramatic increases in the
18 use of, and addiction to, controlled substance
19 pharmaceuticals had been seen for two decades.

15:53:05 20 Prescription drug abuse increases traffic
21 accidents, it increases crime, it increases overdoses, it
22 increases death. You'll hear about this in these
23 counties. This is the nuisance, or so the law calls it.
24 This is the tragedy, as I call it. Whether it's doped up
15:53:28 25 people at a traffic accident or doped up people

1 committing crime because they want -- they're having to
2 buy the stuff off the streets, overdoses where you've got
3 first responders who are there having to give the Narcan
4 or give something to try to save the lives and
15:53:46 5 ultimately, sometimes not getting there on time and the
6 deaths. All of this was foreseeable. That's a legal
7 word -- not legal, but legal in this sense because the
8 Judge will, I expect, charge you that you need to
9 determine whether or not the actions and the results and
15:54:07 10 consequences were a foreseeable part of those actions.

11 And I think that you'll find that they are.

12 If you go back to the PowerPoint, please,
13 Juan.

14 Over time, a lot of these people have
15:54:23 15 migrated from the opioids they were first able to get
16 quite easy to other opioids that are more difficult to
17 get and more dangerous to take. And so if you look at
18 the deaths in the last couple of years, more of the
19 opioid deaths are from the illegal drugs. This is the
15:54:42 20 stuff being hauled over from Mexico or wherever it may be
21 coming from.

22 And it pipelines up into Ohio just like the
23 Florida stuff does. But this is where some people are
24 turning because now the spigot has been tightened and
15:55:01 25 there's not enough money to put people into drug

1 treatment programs.

2 Okay. But I'm sure people have to want to
3 go into those, first, for those to work. I'm not an
4 expert in that, but I know that you need those programs
15:55:15 5 and they need to be funded.

6 And this is the way that these drugs open
7 the door to others.

8 Now, what we've done is we're bringing in a
9 witness. His name is Craig McCann. He's a Ph.D. He's a
15:55:31 10 numbers geek. He looks at computer numbers and

11 he's -- we've been able by His Honor's rulings, we've
12 been able to get all of the Government numbers on this
13 stuff and been able to figure out who's been writing the
14 prescriptions and how many they've been writing and where
15:55:48 15 those drugs are from.

16 And so we've got that information and we've
17 got that, and that's what Dr. McCann does; he analyzes
18 that data to present it in court because I can't just
19 give you a computer program and say here, look at all
15:56:06 20 these ones and zeros and dips and dots. I mean it's
21 tough to do.

22 So he's analyzed all of that data. And
23 he's investigated the distributor defendants, not their
24 behavior. He's not a behavioralist. He's not able to
15:56:20 25 say oh, they did wrong here or they did right there.

1 He's just a numbers geek.

2 But he investigated their behavior through
3 the numbers, how many prescriptions were they filling,
4 and he's going to testify to that amount. He's going to
15:56:36 5 say, all right, someone else tell me what the red flags
6 are.

7 And we'll have Carmen Catizone and others
8 explain the red flags, which prescriptions the pharmacy
9 should have said, "Time out. Before I just fill this I
15:56:49 10 need to make sure it's legitimate." And that's like 90
11 percent of these prescriptions. I mean it's just really
12 high because this is a really dangerous drug, set of
13 drugs.

14 And then they filter through. They screen
15:57:03 15 through them and figure out what ones are legitimate and
16 which aren't. And so what Dr. McCann does is he analyzes
17 those amounts and he gives those amounts of their
18 failures, based upon what he's told are the suspicious
19 orders.

15:57:19 20 He's not qualified to testify about
21 suspicious orders.

22 We've also called what's called an
23 epidemiologist. An epidemiologist is someone who studies
24 large groups and numbers. Katherine Keyes is an
15:57:36 25 epidemiologist. She's at Columbia University in New York

1 City, and she's got a specialty for substance use. And
2 she's going to testify how the oversupply led to
3 diversion, which leads to harm. In other words, you put
4 too many pills out there, some of those pills are going
15:58:00 5 to be diverted, and that diversion is going to lead to
6 harm.

7 And she helps link up those chains. And
8 that's what she does.

9 And so this is what you've got. You've got
15:58:13 10 a foreseeable situation. If we go back to the
11 PowerPoint, please, Juan.

12 You know, I was interested to see there is
13 a witness named Nicole Harrington that I believe the
14 defendants are going to call, and she worked at CVS, and
15:58:30 15 she is one of the people on this PowerPoint. It's Nicole
16 Harrington and Angela Nelson PowerPoint that CVS did.

17 And in this PowerPoint, "Our communities,
18 Our Responsibilities," there are some provisions that
19 you'll get to see and I hope one of them will do this,
15:58:56 20 and oh, I'm sorry. For the Court, this would be
21 Plaintiffs' 459.

22 This document, "Our Communities, Our
23 Responsibilities," the company, CVS here, knew that drug
24 overdoses kill more than cars, guns and falling. You got
15:59:17 25 41,000 deaths from drug overdoses. That's more than

1 traffic, more than guns, more than falling.

2 You've got 52 million people over the age
3 of 12 have used prescription drugs nonmedically in their
4 lifetime.

15:59:34 5 And what I really find interesting about
6 this presentation as opposed to what you're being told in
7 court is the next slide because it's the talking notes
8 that go with this. And actually, Ms. Harrington is going
9 to say, "I didn't write those notes." I don't know which
15:59:54 10 one of them did, which one of them didn't, but I sure
11 hope whoever wrote it will come to court and testify
12 about what they meant when they said it.

13 "One in four teams have reported that they
14 misused or abused a prescription drug at least once in
16:00:11 15 their lifetimes."

16 More people die every year than get killed
17 in a car wreck. Now, look at the bottom here. "When I
18 started to really understand the tremendous growth of the
19 misuse of prescription drugs, I realized I may have been
16:00:32 20 naive to believe we were doing everything we could to
21 reduce the growth of this tragic problem in the U.S."

22 They're going to tell you, "We did
23 everything we could," but they internally know they
24 didn't, at least this witness -- bless you -- does.

16:00:50 25 And so you're going to get to hear this.

1 You're going to get to hear this. This, by the way,
2 dates back to 2015, dates back to 2015. You're going to
3 hear how these companies understood what would happen,
4 how foreseeable this was, even the entry into heroin.

16:01:08 5 So, for example, here's a 2013 document,
6 which is Plaintiffs' Exhibit 20757, and this is a Giant
7 Eagle document talking about pharmacy compliance, and
8 even Giant Eagle, though they are regional, they
9 recognized, "Prescription drug abuse epidemic. In 2009,
16:01:35 10 deaths from prescription drug overdoses exceeded deaths
11 from auto accidents for the first time ever.

12 "Over 20 percent of Americans admit to
13 abusing prescription drugs.

14 "Prescription drugs are now the recognized
16:01:50 15 gateway drugs to heroin and other illegal drugs."

16 Again, different usage of the word
17 "Gateway." But they recognize that you move from one
18 opiate to another when costs or availability are
19 involved.

16:02:06 20 So these companies, from the biggest to the
21 smallest, understood how predictable this was, and that's
22 where we end up there with the aftermath.

23 Now, episode number eight, as we're drawing
24 our binge watching to a close, is The Blame Game, and
16:02:23 25 this is what you're going to see. And the Judge requires

1 both sides to exchange their slides for opening
2 beforehand, and so I've seen their slides, and you'll get
3 to see their slides when they present them. I'm not
4 going to spoil it and tell you what they're going to say.

16:02:37 5 But I am going to tell you to be on the
6 lookout, be on the lookout for slides where they're
7 trying to blame everybody but themselves. They would
8 almost have you believe that a pharmacist is a gum ball
9 machine. They would almost have you believe that a
16:02:57 10 pharmacist is simply there to take your money and to spit
11 out your pills.

12 That's not the law. That's not why
13 pharmacists go to pharmacy school. That's not why they
14 take these classes.

16:03:13 15 You know, I said before, no doctor should
16 be writing a prescription for a Benzo and an opiate. One
17 of our lawyers pointed out to me that I said that
18 inartfully. I was not speaking correctly. It does
19 happen, and it is appropriate on rare occasions, but it
16:03:32 20 should be a dynamite red flag. There's three drugs in
21 combination that are called the unholy trinity or some
22 people call it the holy trinity.

23 I can't go there, but this, these drugs,
24 add a muscle relaxant and they just shouldn't be -- I
16:03:56 25 mean people are taking them for a trip, they're not

1 taking them for medicinal reasons.

2 And this is well-known and it's
3 well-published in the literature, but you've got to give
4 the data to the pharmacists for them to be able to figure
16:04:10 5 it out.

6 If people are coming from several different
7 doctors, you've got to get the data to the pharmacists
8 for them to be able to figure it out.

9 And it doesn't matter how big you are or
16:04:20 10 how small you are, if you're going to make money doing
11 this, you've got to be able to figure it out. And you
12 can't be a Giant Eagle who says, "Yeah, but we're four
13 generations of happiness and community values" when you
14 don't even have a program in place to monitor for
16:04:40 15 suspicious orders until 2013. Nothing. Zippo. Nada.

16 And you can't just start blaming everybody
17 else without also accepting some responsibility. Don't
18 get me wrong, I'm all for blaming all of them. Let's
19 figure out what went wrong. But we don't give a
16:05:09 20 get-out-of-jail-free card and a pass to this group and
21 ignore the zebra. The Blame Game.

22 Now, our last episode I want to talk to you
23 about is a Seedy Past, because I've looked at their
24 slides and I suspect you will hear evidence and you will
16:05:25 25 hear statements that blame a lot of this on Perdue.

1 Perdue Pharma. Perdue, who invented OxyContin in a sense
2 and really marketed the dog out of it. And they did some
3 outrageous stuff in the marketing, and they seduced an
4 entire medical community into thinking for a while these
16:05:50 5 drugs aren't addictive.

6 And what they did in my opinion is
7 fraudulent and it's horrible and it's terrible and I
8 can't say enough bad about it, but they couldn't have
9 done it successfully if other people had followed the
16:06:11 10 rules and the law.

11 And instead, what you've got is you've got
12 people like CVS who jump into partnership with Perdue and
13 actually help sponsor programs where Perdue sends people
14 out to the pharmacists to convince the pharmacists these
16:06:33 15 drugs are okay; just let them go. It's a gum ball
16 machine, let them go.

17 These companies get into relationships with
18 these drug manufacturers, and you're going to hear about
19 them. These companies get together, all of them,
16:06:55 20 including Giant Eagle, and join these trade groups like
21 the National Association of Chain Drug Stores that fight
22 against legislation that would make PDMPs out there for
23 everybody, that fight for legislation that put handcuffs
24 on the DEA and their ability to chase and police the
16:07:20 25 Marino Bill you'll hear about.

1 So you're going to hear about all of these
2 things. You're going to watch all of these episodes
3 unfold. You're going to see what they have to say. And
4 then after you watch it, you get to talk about it.

16:07:35 5 You all will go back in the jury room and
6 you'll get to talk about it; not until then. But when
7 you talk about it, you've got to try and frame this
8 evidence. And so when I present this evidence, I'm going
9 to try to present it in ways that make it easier for you
16:07:56 10 to discuss it later.

11 So you will hear the evidence coming in in
12 ways, this is like my best friend right here. This is
13 called an Ipevo because I'm a visual guy and so I like to
14 see things and I draw them and I write them down and I'll
16:08:10 15 just apologize to you now. Unless you're a visual
16 learner, then you won't mind.

17 If we're questioning from back there, the
18 Court's got their own already hard wired into the system,
19 though it's made by Wolfe, not Optico, but I'll do that
16:08:27 20 because I want you to categorize and listen to this
21 evidence coming in in the ways that will enable you to
22 talk about it.

23 And the Judge has told but the burden of
24 proof. I don't need to tell you about that anymore but I
16:08:39 25 do need to tell you what's going to happen when I sit

1 down because this is the rest of the opening statement
2 that comes from the other sides.

3 They're entitled to -- look, my view of
4 this is again, not one thing I've said is evidence.

16:08:56 5 These documents, if they're admitted into evidence, will
6 be evidence. But right now, I've just read them. They
7 haven't been formally admitted yet.

8 So you're hearing my view of the truth.

9 Now, I'd be a fool to stand up here and tell you
16:09:11 10 something I didn't think I could prove. But the other
11 side, this is a court system. They get to tell their
12 side of things. And we listen and we assess, and that's
13 the right thing to do, to talk about it.

14 But when this is happening, as you're
16:09:29 15 listening to this evidence unfold, I want to give you a
16 couple of things to look at and think about.

17 Juan, if we could go to the -- thank you,
18 you're already ahead of me.

19 One, beware of math. You say wait, two
16:09:49 20 plus two is four, why do I need to beware of that? Yes,
21 two plus two is four. That's fine. You can grab that
22 math and run all the way to the bank but people start
23 doing things with math where they've got access to data
24 that you don't have.

16:10:06 25 So, for example, if someone is going to get

1 up and compare one of their stores to one of the big
2 local stores, there was a store called Overholt's that
3 for a while, for a couple of years, sold a lot of
4 opiates. That's a pharmacy. They sold them badly and
16:10:28 5 wrongly and they'll -- be aware of anybody who tries to
6 compare themselves to Overholt's in ways that make them
7 look good because the math may not be so right.

8 And I'll talk about that as the trial
9 unfolds because you've got to be careful of anybody who
16:10:45 10 is cherry-picking data to talk about.

11 Hold me accountable, but hold everybody
12 accountable because it's going to take me awhile to go
13 through the evidence. See, the Judge calls -- has us
14 call witnesses and we call those witnesses, but after the
16:11:05 15 opening statement that I give, they get to respond.

16 After their opening statement, I don't
17 respond until closing argument. So I'll respond by
18 putting it on through the evidence. So when you hear
19 something, don't hesitate. If you want to make a note,
16:11:20 20 make a note. I'll be making notes because I'm going to
21 disassemble it all with the evidence as this trial
22 unfolds.

23 You know, for example, cherry-picking, pick
24 the store that's got the least amount of sales and
16:11:35 25 compare it to the store with the most amount of sales.

1 Pick the year that works best for you, not
2 the year that works worst. Pick the policy that you
3 followed, not telling them you didn't follow it until it
4 was too little too late. That type of cherry-picking
16:11:50 5 we'll look at together.

6 I want you to be aware of dosing. This is
7 something you're going to hear about in this trial. The
8 difference between an MME and a dose. So one of the big
9 opiates is Morphine. And one of the ways you can measure
16:12:10 10 the potency of an opiate is how equivalent it is to
11 Morphine.

12 That's the MME. But that doesn't really
13 help you if you're trying to count how many doses people
14 sell. And the reason that becomes important is because I
16:12:26 15 just did a little look-see. Doses versus MMEs, Morphine
16 Milligram Equivalents. And here's an example. There's a
17 store called Franklin. Bad store.

18 Franklin, an independent store, sold 9.5
19 million doses but that translates into 241 milligrams of
16:12:50 20 Morphine equivalents. Well, you then take Overholt's
21 which sold 6.5 million and that translates to 176. Why
22 isn't it the same? Because sometimes they're selling a
23 dose of Oxy 30. Sometimes they're selling a dose of Oxy
24 90. Ninety's got three times as much Morphine
16:13:17 25 equivalents even though it's one dose. Or they might be

1 selling Fentanyl for a cancer patient and it's got a
2 Morphine equivalent that's huge compared to the
3 OxyContin.

4 And so these are just different ways of
16:13:28 5 looking at it and you'll hear about it.

6 You'll hear that CVS in their eleven stores
7 in these two counties sold 27.4 million doses, but if you
8 look at the grass on the other side, they're not going to
9 show you that. They're going to cherry-pick a store here
16:13:43 10 and a store there.

11 And so this is the kind of stuff that
12 you'll hear about. Walgreen's, Giant Eagle, 28.4, more
13 than CVS. Walgreen's, more than both of them. Walmart
14 still at 8.9 million, just their four stores.

16:14:01 15 So we'll walk through that together through
16 the trial. It's through the trial you'll hear that
17 evidence.

18 But when you hear it in openings, just keep
19 a list of things like that that you want to talk about.
16:14:14 20 Beware of dates because this is the screen size issue I
21 talked to you about.

22 They would change screen sizes depending
23 upon how closely the DEA was watching, whether they've
24 been sued, whether they were under an agreement to do
16:14:30 25 some things differently. Those screens changed with

1 times so beware of the dates.

2 And finally, beware of the half story.

3 Every witness will take an oath to tell the truth, the

4 whole truth and nothing but the truth and half stories

16:14:49 5 are dangerous. Half stories are things like "It was a

6 beautiful day and then the tornado hit." Well, you can't

7 start that sentence with, "It was a great day."

8 "It was the best of times and it was the

9 worst of times." You can't start that with, "It was the

16:15:11 10 best of times." You get the whole picture.

11 So that's what you'll have a chance to

12 listen to and you'll do it. And then ultimately, I'll

13 take those charts that I kept putting up there that you

14 heard about, and I'll put them down with the witnesses

16:15:24 15 and I'll ask the CVS witness, "Did you develop a system

16 before you started selling this drug or distributing this

17 drug, did you develop a system to blah, blah, blah," and

18 we'll talk about it, and that's what the evidence will

19 unfold.

16:15:37 20 So, Your Honor, I think I'm close to my

21 time being out, but I think I've given you back 15

22 minutes and so I'm out of soap.

23 Ladies and gentlemen, thank you for being

24 attentive. It's just amazing, and it's hard to do and

16:15:52 25 I'm greatly appreciative on behalf of my clients and on

1 behalf of myself.

2 So with that, Your Honor, I'm done.

3 THE COURT: Thank you, Mr. Lanier.

4 Okay. We'll have whichever defendant

16:16:07 5 wishes to begin.

6 OPENING STATEMENTS ON BEHALF OF WALGREEN'S

7 MR. STOFFELMAYR: Yes, Your Honor. Kaspar

8 Stoffelmayr for Walgreen's. We will go first.

9 THE COURT: Okay. Mr. Stoffelmayr.

16:16:16 10 MR. STOFFELMAYR: Let me take one second to

11 get set up, if I may.

12 THE COURT: That's fine.

13 MR. STOFFELMAYR: Your Honor, may I ask you

14 are you going until 5:00 or 5:30 today?

16:17:51 15 THE COURT: Mr. Stoffelmayr, we'll see how

16 it goes and when's a reasonable break.

17 How long you go, I mean, I don't want to

18 cut anyone off in the middle, I don't think that's fair,

19 but how long are you planning to go?

16:18:02 20 MR. STOFFELMAYR: I may go as long as an

21 hour. I'd like to be shorter than that.

22 THE COURT: Okay. Well, we'll certainly

23 finish yours.

24 MR. STOFFELMAYR: Okay. Thank you, Your

16:18:09 25 Honor.

1 THE COURT: Okay. And then if you go, if
2 you take an hour, we'll stop for the day.

3 MR. STOFFELMAYR: Great. Thank you.

4 All right. May it please the Court,
16:18:21 5 counsel, ladies and gentlemen, my name is Kaspar
6 Stoffelmayr, and I represent Walgreen's.

7 I want to say something right off the bat.
8 It is a real honor, a real pleasure to be able to address
9 you, to stand in front of you.

16:18:44 10 It's especially an honor because I
11 represent a company of pharmacists who minutes ago were
12 compared to gum ball machines. That's not who Walgreen's
13 is. That's not how Walgreen's operates. That's not who
14 our pharmacists are.

16:19:01 15 And you're going to get a chance to meet
16 some of them before this case is over.

17 First people I want you to meet, though,
18 are some of my colleagues.

19 You met earlier Peter Wilson. He's a
16:19:13 20 lawyer who works at Walgreen's. Some of you met during
21 jury selection my law partner, Brian Swanson. He will be
22 here for the whole trial. Mr. Wilson may -- he'll be
23 here today, he'll be here tomorrow, and then he may come
24 and go as the trial progresses.

16:19:27 25 And also our partner, Kate Swift. And

1 there are some other members of our team who I hope
2 you'll get to know before the case is over.

3 There were a lot of statements made, but
4 one thing I want to make really clear to everybody from
16:19:48 5 the outset, nobody here, not on behalf of Walgreen's or
6 anybody else, is here to tell you that the opioids crisis
7 is unimportant, that it's not serious; that it hasn't had
8 horrifying consequences for some communities.

9 You just saw some PowerPoint presentations,
16:20:06 10 internal PowerPoint presentations from Walgreen's, and I
11 don't know if you noticed the dates. They go back to
12 2013, one I did notice, long before this stuff was on the
13 front page of the newspaper every day, a long time before
14 anyone was filing lawsuits about it. The people at
16:20:22 15 Walgreen's were enormously concerned about the misuse of
16 opioid drugs.

17 They were thinking about it and talking
18 about it internally and worried about it and worried
19 about what they needed to do going back years and years
16:20:37 20 and years before you saw it on the front page of the
21 paper every day.

22 I think that's the best evidence that, as I
23 said, nobody's here to try to tell you this isn't a big
24 deal.

16:20:49 25 This trial is about more than that, though,

1 of course, right? This trial is about more than is there
2 a crisis and is it terrible. I don't think anyone
3 disagrees with that.

4 What this trial is about is what happened.
16:21:10 5 How did we get here? And when people come to court and
6 file lawsuits and try to figure out who to blame, are
7 they looking in the right places?

8 There's no question, no dispute that
9 Walgreen's, all these pharmacy chains carry these
16:21:25 10 medicines. Every pharmacy in America just about carries
11 these medicines and has carried these medicines for ages,
12 but what Judge Polster said, I wrote down the exact words
13 he used, "What you'll need to figure out is were these
14 pharmacy chains," not pharmacies in general, not all of
16:21:46 15 these pharmacies somehow together, but individual, were
16 these pharmacies, the word he used was, "a substantial
17 factor in creating a public nuisance."

18 At the end of the case, the Court's going
19 to give you legal instructions on exactly what counts as
16:22:00 20 a substantial factor versus not a substantial factor,
21 what counts as a public nuisance versus just something
22 that's upsetting but doesn't count legally as a public
23 nuisance.

24 All right. So this trial, as I was saying,
16:22:46 25 this is not the first time people in Ohio have asked

1 about the reasons we have this crisis of the misuse of
2 prescription drugs.

3 You have on the screen now, it is this
4 document. It was the final report of the Ohio
16:23:05 5 Prescription Drug Abuse Task Force. This came out in
6 2010. And what happened was that the Governor at the
7 time, it was Governor Strickland, issued an executive
8 order creating this task force and the goal of this task
9 force was to address exactly the question that brings us
16:23:22 10 here today: Prescription drug abuse.

11 And the task force members were appointed
12 by the Governor. They weren't lawyers filing lawsuits.
13 The task force members were representatives from the Ohio
14 Department of Public Safety, from the Ohio
16:23:41 15 Department -- excuse me -- of Health, the Attorney
16 General's Office, the Department of Alcohol and Drug
17 Addiction Services, lots of people from law enforcement,
18 representatives of health care organizations,
19 representatives of county Government.

16:23:55 20 And when these people all came together,
21 public officials, when they came together, they
22 identified what they thought were the contributing
23 factors to fatal drug overdose death rates.

24 And what you'll see is they didn't think
16:24:17 25 pharmacies, certainly not well-run chain pharmacies, were

1 a problem in Ohio. So going counterclockwise from the
2 body, the self medicating habits of Baby Boomers -- I
3 apologize this isn't a better company. This is what the
4 original looks like, unfortunately.

16:24:31 5 Self medicating habits of Baby Boomers.
6 Direct-to-consumer marketing. That's like when you see
7 ads on TV or magazines for prescription drugs.
8 Aggressive marketing of opioids. That's marketing to
9 doctors when drug companies, pharmaceutical manufacturers
16:24:48 10 market to doctors.

11 Then you go on, you've got changes in
12 clinical pain management. We're going to talk about that
13 a little bit more but that's changes in how doctors, how
14 doctors treated pain.

16:25:02 15 We've got the growing use of prescription
16 opioids. Doctors were prescribing a lot more
17 prescription opioids by 2010.

18 And then finally you get to diversion. All
19 right. Mr. Lanier talked a lot about diversion and I
16:25:17 20 agree with certainly some of the things he said.

21 Diversion, we're talking about drugs getting into the
22 hands of the wrong people, people who shouldn't have them
23 who are going to use them in ways the drugs shouldn't be
24 used.

16:25:27 25 There's a few different things. The

1 Internet. Back then people actually used to be able to
2 order opioid medications on the Internet. People did
3 that. It was a huge problem. Congress stopped that.

4 Next we've got pill mills. So we have pill
16:25:45 5 mills and people use that term a little loosely but we're
6 talking about doctors who will prescribe drugs to anybody
7 for cash. And back then, a lot of times, the doctor
8 would also give you the pills. It was a doctor/pharmacy
9 all in one.

16:25:58 10 You heard Mr. Lanier talking about pain
11 clinics in Florida. That's what was going on. You would
12 go, get your prescription and get your pills; one-stop
13 shopping.

14 That never happened in one of these
16:26:08 15 pharmacies here in court.

16 If you go down, it is deception and scams.
17 Yeah, there's a lot of scamming that has gone on, people
18 trying to get pills. Pharmacies are the victims of the
19 scamming. They're not the ones doing the scamming.

16:26:25 20 Theft, same thing. There has been theft.
21 Yeah, there's armed robberies at pharmacies. Pharmacies
22 are the victims; not the people doing the theft.

23 And finally, you get to friends and family
24 and I'm going to talk about that before the -- before the
16:26:38 25 day is over. But as it turns out, I'll just preview it.

1 There's a lot of unused pills in medicine
2 cabinets in America, and a lot of those pills get into
3 the wrong hands. It's an unfortunate fact but that's, I
4 think, what they are talking about when they are saying
16:26:57 5 friends and family.

6 So this is what happens when public
7 officials in Ohio come together to try to do their job
8 and try to do their very best to figure out what are the
9 factors that contributed to the misuse of prescription
16:27:11 10 drugs in Ohio.

11 Again, it's not chain pharmacies.

12 With the rest of my time, and I'm not going
13 to go for two-and-a-half hours, I promise you, nothing
14 like that. For the rest of the time, I want to address
16:27:25 15 three topics with you.

16 The first one, oops, I tripped. First one
17 is why are there so many pills? You are going to hear
18 from some of the experts in the case, Mr. Lanier
19 mentioned Dr. Keyes, the epidemiologist from Columbia
16:27:41 20 University. You are going to hear from some people that
21 when there are more pills, more bad things happen.

22 The more pills there are in a community,
23 the more addiction there can be, the more overdoses there
24 can be, and the terrible things that happen with that.
16:27:59 25 So you have to ask yourself why are there so many pills.

1 The next thing I want to talk about is what
2 do pharmacists really do? Who are they? They are not
3 gum ball machines. I promise you. What do pharmacists
4 do and how do they do their job and what is their role in
16:28:17 5 protecting patients and the community?

6 And then the last thing we'll talk about is
7 where do diverted pills for these two counties, Lake and
8 Trumbull Counties, that's what we are talking about.
9 We're talking about diversion, diverted pills available
16:28:33 10 to people in Lake and Trumbull Counties, where do they
11 really come from?

12 All right. Start with why are there so
13 many pills and Mr. Lanier talked about this a little bit
14 and it is absolutely true that if you go back to the
16:28:42 15 1980s, for example, opioid medicines were not used very
16 much. They were used, some of the medicines that are
17 most popular today didn't exist back then, but some of
18 them did. There were other opioids. But these opioid
19 pain medications were used much less frequently in the
16:28:59 20 1980s and earlier. And there are lots of reasons for
21 that. I think Dr. Lembke, who is going to testify, may
22 talk about this.

23 And there's been a big change. Starting in
24 the 1990s and early in the 2000s, there was a huge change
16:29:14 25 in how doctors treat pain. And at the end of the day,

1 the question is why are there so many pills? The answer
2 is amazingly simple: Because doctors write so many
3 prescriptions.

4 They didn't used to, and now they do. Now
16:29:29 5 they write fewer than they did five or six years ago.

6 Some people, as you heard a little bit
7 about, some people blame pharmaceutical manufacturers.
8 They think the problem is that pharmaceutical
9 manufacturers tricked, deceived doctors into writing way
16:29:46 10 too many of these pills, tricked doctors into thinking
11 that these pills are much safer than they are.

12 And as Mr. Lanier previewed for you,
13 because he had my slides, as Mr. Lanier previewed for
14 you, these lawyers here, before they filed the
16:30:05 15 pharmacies, filed lawsuits against pharmacies, were
16 filing lawsuits against drug manufacturers.

17 In 2000 -- in 2018, both Lake and Trumbull
18 Counties filed lawsuits. These are 267 pages long.
19 They're identical. Both counties filed the same lawsuit.

16:30:27 20 The counties filed these lawsuits back in,
21 like I say, 2018 and here's what they were saying before
22 they sued pharmacies.

23 They said that defendants in those cases,
24 the defendants in those cases were pharmaceutical
16:30:42 25 manufacturers, and also some of these big wholesalers but

1 not pharmacies. "Defendants engaged in a sophisticated
2 and highly deceptive and unfair marketing campaign to
3 sell opioid medicines."

4 They went on and said that these
16:31:00 5 defendants, these pharmaceutical manufacturers, spent
6 hundreds of millions of dollars on that deceptive
7 marketing campaign.

8 And it goes on and on with the details. As
9 I said, these are 267 pages long. If we had more time
16:31:19 10 today, you could hear more about this but that is what
11 folks were saying, these lawyers were saying before they
12 sued pharmacies.

13 Now, that marketing campaign is not the
14 only thing going on, obviously that changed the way
16:31:35 15 doctors treat medicine.

16 I want to show you a few slides and you'll
17 see more and more about them as this case goes on and I
18 think Dr. Lembke may be able to talk about this.

19 Other things that were going on. In 1997,
16:31:51 20 the State of Ohio passed this law. This was the law in
21 Ohio passed by the state legislature. And here's what
22 they said. "The State Medical Board shall adopt rules in
23 accordance, at that time, with standards and procedures
24 to be followed by physicians in the diagnosis and
16:32:08 25 treatment of intractable pain." Later they changed the

1 wording there to "chronic pain." You can just think of
2 it as pain that doesn't go away, pain that continues for
3 weeks, months, years.

4 The medical board had to come up with
16:32:25 5 standards for treating intractable pain by prescribing,
6 dispensing, administering dangerous drugs. That's a word
7 the law used to use. They used to say dangerous drugs.
8 That includes opioid medicines, that includes dangerous
9 drugs when the law used that word.

16:32:42 10 They were supposed to dispense, administer,
11 prescribe dangerous drugs in amounts or combinations that
12 may not be appropriate when treating other medical
13 conditions.

14 Okay. That was the law in Ohio starting
16:32:54 15 from 1997. Here's some other things that were happening.

16 You heard a reference along the way, I
17 think, "pain is the fifth vital sign." Some of you may
18 have heard this expression before, some of you not. This
19 is an idea where people started talking about in the:
16:33:10 20 1990s. It really became popular around 2000. This is
21 the document in front of me, Department of Veterans
22 Affairs. You know, the agency of the Federal Government
23 that, among other things, runs the V.A. medical system to
24 take care of our veterans.

16:33:24 25 And this was a tool kit to help people in

1 the V.A. system, the doctors, the nurses, the others,
2 understand this idea that pain is the fifth vital sign.
3 And I want to pause for a second. What does that mean
4 that pain is a vital sign? What they meant by this is
16:33:45 5 this: A heart rate is a vital sign, pain is a vital
6 sign. Anyone who comes into an emergency room or a
7 doctor's office, they will check your pulse. They need
8 to know your pulse. And if there's something wrong, if
9 your pulse is very unique or highly elevated for some
16:34:03 10 reason, they're going to address it. They're not just
11 going to ignore that there's a problem with your pulse.

12 They are saying take the same approach to
13 pain. Treat pain like a vital sign so if somebody comes
14 into the office, somebody comes into your emergency room,
16:34:19 15 you need to find out if that person is in pain just the
16 way you want to find out what their pulse is. And if
17 that person is in pain, you need to address it, you need
18 to offer treatment just the way you would never ignore
19 somebody who got a problem with their pulse.

16:34:32 20 That's what this idea was with pain as the
21 fifth vital sign. It became popular obviously not just
22 at the V.A. Hospitals.

23 In 2000, the Joint Commission, this
24 is -- issues pain standards. The Joint Commission is the
16:35:15 25 organization that sets the standards to accredit

1 hospitals in America. Essentially, every hospital in
2 America that wants to be accredited, that's all of them,
3 has to comply with the standards set by the Joint
4 Commission.

16:35:30 5 And in 2001, for the very first time, they
6 issued pain standards. And the leading point is this:
7 Patients have a right to appropriate assessment and
8 management of their pain.

9 That might seem obvious to some people but
16:35:45 10 in 2001, this was a directive that hospitals hadn't heard
11 before, and they reacted to it. They needed to come up
12 with training programs so that their doctors and nurses
13 and other providers would know how to do a better job
14 identifying pain and would know how to do a better job
16:36:03 15 treating pain.

16 This is the last slide of the series I want
17 to show you but it's really important.

18 This is a statement that comes out in 2001.
19 It's a joint statement from 21 health organizations and
16:36:18 20 the Drug Enforcement Administration. Drug Enforcement
21 Administration's role here is not because it's a health
22 care organization. It's a law enforcement and regulation
23 organization, but they are on board.

24 And here is what they say. They say,
16:36:42 25 "Undertreatment of pain is a serious problem in the

1 United States, including pain among patients with chronic
2 conditions and those who are critically ill or near
3 death. And effective pain management is an integral and
4 important aspect of quality medical care, and pain should
16:36:56 5 be treated aggressively."

6 Then they talk about opioid medications
7 specifically. Make sure I can get this right.

8 They say, "For many patients, opioid
9 analgesics," analgesics means pain medications. It's not
16:37:17 10 a word you're familiar with. I was not.

11 Opioid analgesics, when used as recommended
12 by established pain management Guidelines, are the most
13 effective way to treat their pain and often the only
14 treatment option that provides significant relief."

16:37:29 15 Okay. This is the Drug Enforcement
16 Administration talking. This is the American Academy of
17 Family Physicians, the American Cancer Society, the
18 American Society of Anesthesiologists. These are not
19 fringe organizations. This is what the mainstream
16:37:42 20 medical community and the DEA are telling doctors, it's
21 what they are telling the public at large, and it's what
22 they're telling pharmacists for that matter. That's what
23 they're telling anyone who will listen.

24 So as you would probably expect, the use of
16:38:00 25 these medications went up a lot, and it went up quickly.

1 Something you -- there was a reference to
2 this earlier, but you may have missed it. It went by
3 quickly, the DEA sets quotas for opioid medications.
4 What that means is that the companies that make these
16:38:17 5 medicines can't just make as much as they want. You
6 know, if you're making cars, you're Ford Motor Company,
7 you can make as many cars as you want. If you can't sell
8 them, that's on you. But you can make them. The
9 Government doesn't care. You can make as many cars as
16:38:31 10 you want.

11 If you're making opioid medications, you
12 can't make as much as you want. Every year the DEA sets
13 a limit and they say this is the limit for opioid
14 medications that can be made and/or sold in our country.
16:38:43 15 Manufactured, imported, sold.

16 And the way they do that is the DEA looks
17 at these -- this is the language. They look at the
18 medical, scientific research and industrial needs of the
19 United States. They look at what are our needs in our
16:39:02 20 country, how much of these medicines does our country
21 need. They figure out how much they think we need and
22 they say to our manufacturers okay, you can make that
23 much, you can make as much as we need but you can't make
24 more. You can't make and sell more of these medicines,
16:39:17 25 which are addictive, for sure, which can be abused, for

1 sure. You can't make more of those medicines than the
2 DEA says we need.

3 And this is what these quotas look like in
4 much of the time period we're talking about.

16:39:35 5 These are the quotas for Hydrocodone and
6 Oxycodone. And I'm glad Mr. Lanier said those are the
7 two he's going to concentrate on the case because those
8 are the ones we have this data for and it's true, those
9 are the most widely prescribed opioid medications, I
16:39:53 10 believe, in the U.S.

11 Look at what happens to the line. The blue
12 line at the bottom, that's Hydrocodone. That's used in
13 Vicodin, for example. If you've ever seen a Vicodin
14 prescription, the medicine in there is a Hydrocodone.
16:40:09 15 Also has Tylenol.

16 At the beginning of this time period in
17 2000, the quota for Hydrocodone is 20,000 kilograms.
18 That was what they thought we needed.

19 In 2006, six years later, the need has
16:40:24 20 doubled according to DEA. More than doubled. It's over
21 40,000 kilograms.

22 By 2013, the need, according to DEA, has
23 doubled again to a hundred thousand kilograms. With
24 Oxycodone, it's even, even starker. Oxycodone is a more
16:40:41 25 powerful opioid than Hydrocodone. It's used in Percocet,

1 also used in OxyContin, which is a slower, slow-release
2 version, and you can buy or your doctor prescribes it for
3 you, there are pills with pure Oxycodone with no other
4 ingredient.

16:41:00 5 This is what DEA concluded about the
6 nation's need for Oxycodone. At the beginning of the
7 time period 2000, it was 35,000 kilograms a year. By
8 2010, it had tripled to a hundred thousand kilograms per
9 year. And by 2013, the number, the need according to
16:41:20 10 DEA, had quadrupled. Now we're up to 150,000 kilograms
11 according to DEA.

12 So where did the pharmacists fit into this
13 story? This is the demand. This is the need according
14 to DEA.

16:41:33 15 Pharmacists don't create the demand. They
16 don't create that need. Pharmacists don't tell doctors
17 how many pills to prescribe, which pills to prescribe,
18 for what duration a patient needs treatment.

19 Where pharmacists fit in is by filling
16:41:49 20 prescriptions that doctors write. They do a lot of other
21 things, we're going to talk about some of the other
22 things pharmacists do, but they don't tell doctors which
23 prescriptions to write or how many pills to prescribe.

24 So that brings us to pharmacists. And I
16:42:06 25 want to talk a little bit about who pharmacists really

1 are and what they do. I was so pleased that Giant Eagle
2 brought a pharmacist here so you can see one in the
3 flesh, so to speak. You'll meet some more before the
4 case is done.

16:42:22 5 The pharmacists I want to talk about
6 primarily are the pharmacists who work at Walgreen's.
7 Interestingly enough, this year, Walgreen's is 120 years
8 old. The very first Walgreen's pharmacy was on the south
9 side of Chicago, and there was a Mr. Charles Walgreen.
16:42:42 10 Mr. Charles Walgreen was a registered pharmacist. He was
11 working in a pharmacy on the south side of Chicago and
12 decided to take out a loan and buy the store from his
13 boss. And that was the first Walgreen's.

14 Today you could find a Walgreen's in every
16:42:57 15 state of the union, plus DC and Puerto Rico.

16 As you may well be familiar with, if you're
17 in the front of the store, front area of the store, you
18 can buy snacks, you can buy toothpaste, baby products,
19 all sorts of things. This time of year, you're probably
16:43:17 20 starting to see Halloween candy, Halloween decorations,
21 that sort of thing.

22 There is also a pharmacy at every
23 Walgreen's. It was originally, Charles Walgreen's was a
24 pharmacist and to this day, there is a pharmacy at every
16:43:32 25 Walgreen's.

1 And I was a little surprised to learn this
2 myself, but if that Walgreen's pharmacy is open, this is
3 not unique to Walgreen's, what I'm going to tell you, if
4 that Walgreen's pharmacy is open, there is a Walgreen's
16:43:48 5 pharmacist on duty. You may see other people behind the
6 counter. There may be pharmacy technicians, for example,
7 and usually there are, but if the pharmacy is open, could
8 be 2:00 o'clock in the morning at a 24-hour pharmacy, if
9 the pharmacy is open, there is a Walgreen's pharmacist on
16:44:04 10 duty.

11 So who are these people? Who are
12 pharmacists? The first thing to say about them is that
13 they are health care professionals. That is their
14 self-identity. That is their career.

16:44:19 15 A pharmacist is going to typically between
16 six and eight years of between college and pharmacy
17 schools, and if it's a combined program, sometimes they
18 do two programs, but you're looking at between six and
19 eight years of training.

16:44:33 20 They have had hundreds of hours of
21 practical training before they can sit for the boards to
22 get a license.

23 They have to take a licensing exam. They
24 have to pass their licensing exam. And they have to get
16:44:46 25 a license from the Board of Pharmacy, just like this is

1 an Ohio Board of Medicine that regulates and licenses
2 doctors. There is the Ohio Board of Pharmacy that
3 regulates and licenses pharmacists.

4 And if a pharmacist isn't doing their job
16:45:02 5 right, if they are dispensing pills when they shouldn't,
6 the Board of Pharmacy can take that license away.

7 They also have continuing education
8 requirements to keep up their practice, especially the
9 longer they've been out of school.

16:45:20 10 It's an important job, it can be a
11 difficult job, it can be a stressful job. Pharmacists
12 are pretty well paid for it, by and large. A new
13 pharmacist coming out of school in Ohio is probably going
14 to make just around \$100,000 a year. Most pharmacists
16:45:36 15 are making somewhere between a hundred and \$130,000 a
16 year in Ohio.

17 As you would expect, there are rules for
18 pharmacists.

19 Like there are rules for what pharmacists
16:45:47 20 do, and there are rules for what they may not do. Those
21 are both rules, of course. It's important you do the
22 things you're supposed to do. It's also important you
23 don't do the things you're not supposed to do.

24 And what you're going to find out is that
16:46:02 25 at Walgreen's, pharmacists comply with both kinds of

1 rules.

2 So let's start with rules for what
3 pharmacists do.

4 The most important rule for what
16:46:14 5 pharmacists do is they have an obligation for patient
6 care. You go into a pharmacy, you may just think you're
7 a customer. From the pharmacist's point of view, you're
8 a patient. The people they fill prescriptions for are
9 their patients and they have a professional obligation to
16:46:32 10 care for their patients. That means a lots of things,
11 but first and foremost, it means that if you are a
12 pharmacist, your job is to make sure that people who need
13 medicines prescribed by their doctors are able to get the
14 medicines they need.

16:46:49 15 If you're a pharmacist and you're not doing
16 that, you're not doing your job as a pharmacist. If a
17 doctor refuses to take care of people, you're not doing
18 your job as a doctor. If a pharmacist refuses to help
19 people get prescription medicines that they need, you're
16:47:05 20 not doing your job as a pharmacist.

21 There are, I should say, a lot of steps a
22 pharmacist takes before filling a prescription. Their
23 job isn't just handing pills across the counter. They're
24 not gum ball machines or anything like that. You're
16:47:26 25 going to hear from pharmacists about all the things they

1 do when they fill a prescription to make sure that they
2 are filling the right prescription, that they are filling
3 it with the right medicine in the right dose to look out
4 for drug allergies and look out for interactions between
16:47:42 5 drugs.

6 This is where, Mr. Lanier said this and
7 it's absolutely true, this is where pharmacists are
8 really specialized. They know a lot more about
9 interactions between drugs and sometimes drug allergies
16:47:54 10 than anybody else.

11 And that is one of the things they are
12 doing to look out for their patients.

13 There's all sorts of things going on like
14 that.

16:48:01 15 I hope you didn't have the impression from
16 the presentation earlier that there's all this data about
17 a patient's prescriptions that the pharmacist can't see.
18 I thought I heard that at least implied.

19 When the pharmacist is filling a
16:48:17 20 prescription, they have this, and it shouldn't be
21 surprising, access to the prescription records for that
22 patient.

23 Now, they're filling for Patient A, they're
24 not supposed to dig into Patient B's records but if they
16:48:32 25 are filling for Patient A they are looking at all the

1 other prescriptions that Patient A has filled at
2 Walgreen's. That's not secret information. It's what
3 pharmacists are able to see.

4 When it comes to controlled substances,
16:48:45 5 that's what brings us here. There are extra steps.
6 There's even more a pharmacist is going to do.

7 Controlled substances include opioid
8 medications. That's clear. You should probably know
9 that's not all that counts. You know, Valiums, Xanax,
16:49:01 10 those are controlled substances, too. Sleeping
11 medications, Ritalin, Adderall, there are lots of
12 controlled substances out there. Opioid medications are
13 the ones we're going to be talking about most, of course.

14 A few things we should talk about at the
16:49:16 15 outset when we think about opioid pain medications.

16 The first one is that most of the time, a
17 doctor has prescribed these medications and they are good
18 doctors doing the right thing. Yeah, there are some bad
19 doctors out there. This is a statement by DEA. I don't
16:49:33 20 think anyone would argue that it's a statement on
21 dispensing controlled substances for pain from 2006. The
22 DEA recognizes that the overwhelming majority of American
23 physicians who prescribe controlled substances do so for
24 legitimate medical reasons.

16:49:52 25 Yes, there are times when somebody comes in

1 with a bogus prescription. That is not the usual case.

2 The other thing we can't lose sight of is
3 how important these medicines are. People talk about
4 these medicines in sort of a flippant way as if all they
16:50:11 5 do is addict people, all they do is make people sicker.

6 These are critically important medicines.
7 Every one of them has been approved by the Food & Drug
8 Administration to treat pain. You can't just make these
9 medicines because you feel like it. The drug
16:50:27 10 manufacturers in all cases have gone to FDA and FDA has
11 said, "This is an appropriate medicine to treat pain."

12 And there are people who need these
13 medicines. Sometimes need them desperately. There are
14 people recovering from surgeries who need pain control.
16:50:47 15 There are people who have been in serious accidents who
16 need pain control. There are people in our communities
17 who have a kind of pain from various conditions, they
18 can't get out of bed without their medicine. They can't
19 get out of bed in the morning, they can't hold a job,
16:51:05 20 they can't join their families for an evening meal.

21 Those people need these medicines.

22 And there are, of course, people with
23 horrible pain from cancer. There are people in hospice
24 near the ends of -- near the end of their lives who would
16:51:20 25 suffer horribly and unnecessarily if these

1 pains -- excuse me -- if these medicines weren't
2 available to them.

3 Unfortunately, there are people, there are
4 criminals, oops, there are criminals who will try to
16:51:38 5 trick pharmacists into dispensing these medicines to
6 people who don't need them, and they are criminals.

7 These are the major ways that criminals
8 divert people from pharmacists.

9 All right. We've had bad doctors. There
16:51:57 10 aren't a lot of them. They exist. You'll probably hear
11 about a couple of them before this trial is over.

12 There are bad doctors who take cash and
13 write prescriptions, no questions asked. Again, very few
14 of them thankfully, but they exist.

16:52:11 15 There are people, I don't even want to call
16 them patients, there are criminals who will trick
17 doctors, good doctors, into writing prescriptions they
18 don't need. So that might be somebody who fakes their
19 symptoms, who pretends to be in pain when they're not to
16:52:26 20 get a prescription, or it might be somebody who has a
21 real injury but they go to five different doctors with
22 the same injury to get five prescriptions when they need
23 one.

24 That happens, unfortunately, and that is a
16:52:38 25 crime. It is absolutely a crime.

1 There are cases where criminals have stolen
2 prescription pads. Maybe they had someone on the inside
3 who worked at the Doctor's Office, they steal a
4 prescription pad and write their own prescriptions.

16:52:52 5 Nowadays, this doesn't happen very much
6 because so much prescribing is electronic, but if you go
7 back to 2010, '11, '12, most prescriptions, maybe all
8 prescriptions were written on an old fashioned
9 prescription paper pad.

16:53:08 10 The last thing over there, I have people
11 who forge prescriptions. And they have always existed
12 and they will continue to exist. You know, maybe once
13 everything is electronic, you have to be really
14 sophisticated, but that has always been a big problem.

16:53:27 15 Because these criminals are out there,
16 there are, of course, steps that pharmacists take to
17 avoid being tricked, to avoid being taken advantage of.

18 None of these are examples where the
19 pharmacist is a criminal. In fact, you're not going to
16:53:43 20 hear about that. You're only going to hear in this case
21 about pharmacists who were taken advantage of by a
22 criminal who tricked them, who wanted these meds.

23 So pharmacists, you know, they take steps
24 to guard against this. That is part of their
16:53:58 25 professional obligation, too.

1 They learn about this in pharmacy school.
2 You may have thought this is all on-the-job training or
3 something. That's not true. Everybody comes out of
4 pharmacy school knowing about their legal obligations.
16:54:14 5 Mr. Lanier talked about that corresponding
6 responsibility. They learn all about the law in pharmacy
7 school, they learn about their corresponding
8 responsibilities, the requirements that they have, and
9 they learn how to identify suspicious, suspicious
16:54:29 10 prescriptions.

11 That's what they are learning about in
12 pharmacy school along with everything else.

13 Now, if they come to Walgreen's, they also
14 need to comply with what Walgreen's calls its good faith
16:54:45 15 dispensing policy. This goes back in different version,
16 this version I'm looking at here is from 2012, I believe.

17 This is a Walgreen's policy that every
18 Walgreen's pharmacist has to comply with. First thing we
19 say is you must use the elements of good faith dispensing
16:55:06 20 in conjunction with state and federal laws. This is on
21 top of state and federal law.

22 We tell them that you must comply. We
23 remind them about their corresponding responsibility, and
24 we tell them at the bottom if you don't comply, if you
16:55:19 25 don't do this, if you don't comply with your

1 corresponding responsibility obligations, if you don't
2 comply with this policy, you can be disciplined,
3 including terminated, including fired out of a six-figure
4 job for not complying with these rules.

16:55:36 5 Before the case is over, you are going to
6 get a chance to read this in as much detail as you want.
7 I'm sure you don't have time today to go through the
8 whole thing, but you will get to see it all, and you'll
9 get to see every version of it you want to see. You will
16:55:51 10 get to read the whole thing.

11 I just want to hit a couple highlights.

12 The first thing is procedures. It starts
13 with procedures; things like patient ID, check for ID if
14 you don't know this person. Make sure, make sure the
16:56:07 15 prescriber has a valid license. Mr. Lanier talked about
16 how important that is. We agree, it is important. Check
17 to make sure the prescriber has a valid license. Check
18 the PDMP. Mr. Lanier talked about how important it is to
19 check the PDMP. That's that database and you can find
16:56:23 20 out if someone is filling prescriptions all over town.
21 We agree. We tell pharmacists check the PDMP.

22 That thing at the bottom, DUR, that stands
23 for Drug Utilization Review. That is a review that will
24 help you identify drug interactions. A pharmacist is
16:56:39 25 always concerned about is the drug I'm giving someone

1 going to interact with another drug?

2 That includes those cocktails you heard
3 about. Cocktails is a drug interaction. That's the
4 reason it's dangerous, these cocktails, because it's a
16:56:53 5 drug interaction. That is part of the DUR, Drug
6 Utilization Review.

7 Then it goes on and says listen pharmacist,
8 you're a professional, you went to school, you know how
9 to do your job, but here are things you should be looking
16:57:06 10 out for, things you should be considering.

11 And I've got to say virtually all the red
12 flags, maybe all of them, we'll find out, all the red
13 flags Mr. Lanier identified, the doctor shopping, people
14 writing the same prescription over and over again, people
16:57:25 15 paying cash, they're all in here. It's exactly the
16 things we are telling our pharmacists to look out for.

17 It doesn't take lawyers to figure that out.
18 Okay? This is what pharmacists learn in pharmacy school.
19 This is what Walgreen's has been telling them to do for
16:57:42 20 ages.

21 And here we get to the end, last stint of
22 the process. If after reviewing the elements of good
23 faith of dispensing, you've got three options: One,
24 dispense. If everything checks out, this person needs
16:57:55 25 their medicine, you need to give them their pills.

1 Two, if a doctor says it's not a valid
2 prescription, for example the doctor says that's not my
3 patient, I never heard of this person, you obviously
4 don't fill the prescription.

16:58:07 5 And what I really want to draw your
6 attention to is number three. Even if the prescriber,
7 the doctor, informs the pharmacist that a prescription is
8 valid -- so if a doctor says it's A-OK, I want you to
9 fill this, even then, if the pharmacist is not
16:58:24 10 comfortable, the pharmacist determines -- I think my
11 battery went out -- the pharmacist, even then -- I think
12 I have to turn this on -- even then, if the pharmacist is
13 uncomfortable, the pharmacist says the elements of good
14 faith -- Jesus, excuse me. Is that better?

16:58:53 15 Even then if the pharmacist is
16 uncomfortable, so someone comes in with a prescription,
17 the doctor says A-OK, I want you to fill this but because
18 of all those red flag-type considerations, the pharmacist
19 is uncomfortable, Walgreen's tells the pharmacist, "You
16:59:09 20 have a responsibility to refuse to dispense. You go
21 ahead and refuse to dispense that prescription and the
22 company will back you up. The company is telling you to
23 do it."

24 What you're going to find out is in real
16:59:26 25 life examples, this is a policy. Maybe someone's going

1 to say that's a policy, who cares, no one pays attention
2 to policies. One, you're going to find out that
3 Walgreen's pharmacists take this policy very seriously.
4 Two, you will see examples of how they apply it in real
16:59:43 5 life. You're going to hear stories and see examples of
6 people turning away prescriptions, sometimes over and
7 over.

8 You will see examples like this. This is
9 an investigative report, comes out of Lake County. This
16:59:56 10 one goes back to 1998. Remember all this stuff about too
11 little, too late? This is way back in 1998.

12 In 1998, the Lake County Narcotics Agency
13 got a phone call from Melanie Burlinghouse.
14 Ms. Burlinghouse is a registered pharmacist at a
17:00:13 15 Walgreen's in Mentor. She says she has a fraudulent
16 prescription. Pharmacist Burlinghouse didn't just call
17 the police. She took the trouble to identify that the
18 people were in a tan station wagon and she went and wrote
19 down the registration number to give to the police to
17:00:30 20 make sure they could catch these folks.

21 Here's another one from years and years
22 later, 2010, a presentence report. This person was being
23 sentenced, how did they end up being arrested, what
24 started the investigation? The pharmacist at Walgreen's
17:00:45 25 contacted Willoughby police in regards to a male and

1 female attempting to pass an altered prescription.

2 That's not a gum ball machine. That is a licensed
3 professional health care provider.

4 So that takes us through what rules for
17:01:06 5 what pharmacists do. Some of the rules. You'll hear
6 more as the case go on.

7 Now, I want to talk to you about rules for
8 what pharmacists may not do.

9 What do they not get to do? The main one I
17:01:21 10 want to talk to you about is that pharmacists may not
11 write prescriptions. Pharmacists may not make
12 prescribing decisions. For the most part, if a
13 pharmacist wrote a prescription, that would be like me
14 writing a prescription. It's against the law.

17:01:36 15 Pharmacists may not write prescriptions
16 because they may not make prescribing decisions.

17 Kind of makes sense. Think about it.
18 Pharmacists have a lot of training, a lot of expertise in
19 the practice of pharmacy, not the practice of medicine.

17:01:54 20 They did not go to medical school. They do
21 not have the clinical training that doctors have,
22 including internships, residencies, sometimes
23 fellowships.

24 Any doctor has to have a medical license
17:02:08 25 from the State of Ohio board of medicine to practice

1 medicine and write prescriptions. The State of Ohio will
2 take that license away if the doctor is writing bad
3 prescriptions or not practicing properly before a doctor
4 can write prescriptions for controlled substances. On
17:02:27 5 top of that, they have to have a special registration
6 with the DEA. And again, the DEA will suspend that
7 registration and revoke that registration if they are
8 concerned that the doctor is not writing correctly.

9 What else do doctors do when they see a
17:02:44 10 patient, things that pharmacists can't do? Well, a
11 pharmacist, you could go see a doctor. Your doctor has
12 access to your whole medical history, all of your medical
13 files. If they don't have those files, they could
14 probably get them. They'll talk to you about your
17:02:59 15 medical history, talk to you about your family medical
16 history as well.

17 A doctor does a physical exam. Right? You
18 go to a doctor, they could do a physical exam, they could
19 talk to you. They could ask you about your symptoms, how
17:03:10 20 long you've had these symptoms, they'll tell you to
21 describe the symptoms and how they've changed.

22 Doctors can order tests. They will order
23 blood tests, they'll order x-rays, they can order MRIs,
24 all that sort of thing. And at the end of the that
17:03:23 25 process if you are sick or injured or have an issue, a

1 doctor makes a diagnosis.

2 Based on everything they know about the
3 patient, based on their expertise, their clinical
4 judgment, they can say, "Okay, I know what's going on
17:03:36 5 with this patient or I have a good guess or I have
6 something we're going to start with and we'll see how it
7 does," but they make a diagnosis.

8 Pharmacists can't do any of those things
9 and certainly can't, shouldn't diagnose patients.

17:03:50 10 And after all that is when a doctor writes
11 a prescription. Sometimes it's a quick process and
12 simple. Sometimes it's a long process, a complicated
13 case. But every time a doctor writes a prescription, at
14 the end of the day, they are saying based on everything I
17:04:06 15 know about this patient, based on my clinical judgment,
16 based on my training and expertise, here's what I think
17 is the best medicine option for this patient. Knowing
18 what I think are going to be the benefits for the
19 patient, abusing this medicine and also what are the
17:04:21 20 risks, what are the possible side effects, based on all
21 of that they are making a decision that they think this
22 is the best medicine option for that patient.

23 Pharmacists can't do any of that.

24 Where do pharmacists fit in? Where a
17:04:35 25 pharmacist fits in is if somebody comes with that

1 prescription and they think the patient is trying to
2 commit a crime of diversion or any crime, they think the
3 patient is trying to commit a crime, and they think the
4 doctor is in cahoots with the patient through writing
17:04:51 5 bogus prescriptions, yeah, in that case absolutely, the
6 pharmacist should refuse to dispense medication.

7 But what you're going to hear is that in
8 other cases, in every other case, a pharmacist, as part
9 of their professional obligations, cannot, should not,
17:05:12 10 stand between doctors and their patients by
11 second-guessing the doctor's medical decision, just
12 saying I think I know better what's the right pill for
13 this person.

14 You would never, nobody would ever accept
17:05:25 15 this. The Board of Pharmacy would hear about this. The
16 Board of Pharmacy, anyone else would never accept it if
17 you come to the pharmacy and the pharmacist says, "I know
18 your doctor thinks you should be taking a 30 milligram
19 pill twice a day, but as your pharmacist, I feel I should
17:05:47 20 start you off on ten milligrams and see how you're
21 feeling and come back and see me in two weeks."

22 So that brings me to the final agenda item.
23 And I'm going to apologize. I don't mean to be rude
24 looking at my watch. It is because there is no clock in
17:06:06 25 this room, I've discovered.

1 But let me finish off on this. And again,
2 this question where do diverted pills in these two
3 counties really come from is critical because at the end
4 of the case, you're going to get instructions on the law
17:06:27 5 from Judge Polster, and one of those instructions is
6 going to be this. So this is going to be one of the
7 things he's going to tell you the plaintiffs need to
8 prove to make out their case. Right?

9 They don't make out their case just by
17:06:44 10 saying, you know, I think there's a lot of blame to go
11 around and the opioid crisis is bad. There are legal
12 requirements that they need to make to make out their
13 case, and one of those is going to be this:

14 That these pharmacies, each of them
17:06:58 15 individually, not just together, not pharmacies as a
16 world, these pharmacies were a substantial factor. They
17 need to prove that word, were a substantial factor in
18 creating a public nuisance, not in the sense of the
19 opioids crisis generally but a public nuisance of
17:07:18 20 diverted opioid medications in those two counties,
21 diverted opioid medications in these two counties, Lake
22 and Trumbull.

23 So we need to talk about where do the
24 diverted pills in these two counties really come from.
17:07:32 25 And in the presentation earlier today we heard very

1 little about the actual counties, about what actually
2 goes on, you know, on the ground in Lake and Trumbull
3 Counties.

4 There were some discussions of Walgreen's
17:07:50 5 acting as a distributor, and you'll hear much more about
6 this later in the case, but it's getting late in the day
7 and I want to pick a couple points.

8 The first thing to emphasize you're going
9 to find out, if it wasn't clear already, is that when
17:08:05 10 Walgreen's acted as a distributor, it only ever
11 distributed to its own pharmacies. And when I say its
12 own pharmacies I mean pharmacies that are owned by
13 Walgreen's. There's no such thing as a franchise
14 Walgreen's. Sometimes people wonder that. These are
17:08:21 15 pharmacies that are owned by Walgreen's. These are
16 pharmacies run by a pharmacy manager, who is a Walgreen's
17 pharmacist. And they are staffed exclusively by
18 Walgreen's pharmacists who work for the company.

19 You've heard a lot about the system of
17:08:38 20 controls that distributors are supposed to have. They
21 have to monitor for certain kinds of orders.

22 You're going to hear from this gentleman,
23 Greg Anderson, about that. Greg Anderson is retired
24 after a 28-year career at the DEA.

17:08:57 25 I hope you get a chance to hear about some

1 of the amazing things that he did during his time at the
2 DEA. He worked at the Detroit field office, which as you
3 saw, includes responsibility for Ohio. He worked in
4 Washington, D.C. at the headquarters, and he worked
17:09:18 5 overseas in Pakistan and other places. He's had a
6 fascinating career.

7 And he is going to be able to explain to
8 you that at the Walgreen's Distribution Centers, they
9 were always doing what DEA expected them to do at the
17:09:33 10 time. The DEA's expectations. You may conclude that
11 they changed over time, you may not, but he will explain
12 to you, he will explain to you how that works and that
13 Walgreen's was doing what DEA wanted.

14 You'll hear stories. There's a lot about
17:09:52 15 Florida in all the highlighting that was going on really
16 quickly. There's all these references to Florida.

17 You're going to hear from Mr. Anderson and
18 others about a Distribution Center in Ohio, in
19 Perrysburg, and you will hear about times when DEA came
17:10:09 20 to the Perrysburg Distribution Center and said, "We want
21 you to make some changes," and Walgreen's made those
22 changes and there was correspondence. It was a
23 cooperative back and forth to make sure that DEA was
24 satisfied with how they were doing business.

17:10:24 25 The other thing Mr. Anderson is going to be

1 able to explain to you, and you might hear from some
2 others, is that even though Walgreen's stopped
3 distributing back in 2014 -- so what is that, seven years
4 ago now -- even though Walgreen's stopped distributing,
17:10:43 5 those checks and controls to see what kind of orders are
6 coming out of pharmacies, Walgreen's still does that.

7 They don't have to. No one ever told them
8 you should. No one ever asked them to. But they still
9 have that monitoring system in place to see what orders
17:10:59 10 Walgreen's pharmacies are placing with the new
11 distributor because if there is a problem at a Walgreen's
12 pharmacy, if there is a Walgreen's pharmacy that's
13 placing orders for Oxycodone that don't make any sense
14 for a pharmacy that size or that community, Walgreen's
17:11:18 15 wants to know.

16 They've spent a lot of time and money on
17 that system to make sure that if there's a problem at a
18 Walgreen's pharmacy, Walgreen's is going to know about it
19 and Walgreen's is going to do something about it.

17:11:38 20 I will pull back a little bit to hopefully
21 make it a little easier on the Court Reporter.

22 But let's talk again about diversion, not
23 in Florida, not in other places, but in Lake and Trumbull
24 Counties. What do we really know about where do diverted
17:12:03 25 pills really come from?

1 You're not going to hear any stories in
2 this case, I predict and I'm confident, you're not going
3 to hear any stories about theft out of Walgreen's stores
4 being a big problem, theft out of the Perrysburg
17:12:13 5 distribution or any distribution center being a big
6 problem.

7 You're not going to hear about pills that
8 fell off the back of a truck. You're not going hear
9 about pharmacists selling pills out of the back door of a
17:12:24 10 pharmacy. Nothing like that.

11 You're not going to hear anyone say, I
12 don't believe, that a Walgreen's pharmacist is a
13 criminal.

14 You are going to hear about other criminals
17:12:39 15 who tricked Walgreen's pharmacists in some occasions;
16 you're going to find out, very, very few.

17 But we've been talking about how criminals
18 divert pills from pharmacies, how they divert pills from
19 pharmacies. The thing I alluded to you early on that you
17:12:58 20 didn't here anything about this morning -- not this
21 morning -- earlier this afternoon, is that most diversion
22 doesn't involve a pharmacy. Most diversion does not
23 involve a pharmacy. It's what they call medicine cabinet
24 diversion.

17:13:13 25 Now, I mentioned this in the beginning when

1 we were looking at the Ohio Task Force report that they
2 identified friends and family as a problem. Let me spend
3 a few minutes on this.

4 Most pills, most pain pills that are
17:13:29 5 prescribed in America go unused. They go unused, which
6 means they're sitting in medicine cabinets available for
7 someone to take them, a friend, a relative, a plumber,
8 anybody who has access to a medicine cabinet.

9 These are two studies that have been done.
17:13:52 10 The first study looked at opioid pills prescribed after
11 common dental procedures. They looked at tooth
12 extractions, a relatively common dental procedure that
13 people typically needed some kind of pain control after.
14 The filling, hopefully not, but tooth extraction, you
17:14:11 15 will usually get some kind of pain relief if you want it.

16 They look at pills prescribed after tooth
17 extractions, and they figured out that 54 percent of them
18 went unused. And the authors of this study did the math,
19 and they figured out that means there are 100 million
17:14:28 20 unused opioid pills per year in America just from tooth
21 extractions. That's a lot of pills.

22 This next study looked at common outpatient
23 surgical procedures. The study was done at the Dartmouth
24 University Medical Center in Massachusetts. This is a
17:14:52 25 top hospital. These are top doctors at the Dartmouth

1 University Hospital, and they looked at the most common
2 outpatient surgical procedures they were doing at this
3 time. They are listed over on this side.

4 And they found out that 71 percent of the
17:15:07 5 pills went unused or were left in medicine cabinets
6 unless somebody hopefully knew what to do to dispose of
7 it properly. 71 percent. Now, these authors didn't do
8 the math. I suspect the number would be far higher than
9 a hundred million if we're talking about procedures like
17:15:25 10 this, but they didn't give us, they didn't give us that
11 math.

12 So we got all these pills in medicine
13 cabinets. Unsurprisingly, a lot of them end up in the
14 wrong hands, unfortunately. It's not surprising but it's
17:15:40 15 unfortunate. The Government is studying this question.
16 The Government has asked when people misuse pills, where
17 did they get them. The Government got people who
18 researched this, were very interested in this question.
19 Of all the places you can get a pill, where do people who
17:15:58 20 misuse pills get them? And this is what they discovered.

21 A 50.5 percent, just over half, got the
22 pills free from a friend or relative, for free from a
23 friend or relative.

24 Four percent took them without asking from
17:16:15 25 a friend or relative. And then 11 percent bought them,

1 paid the friend or relative. A much smaller number buy
2 them from drug dealers.

3 It's only those two wedges at the bottom
4 that involve filling a doctor's prescription, that even
17:16:36 5 hypothetically involved a pharmacy. Now that means -- I
6 think it's 25 percent, 25.2 percent if you add up those
7 two wedges.

8 That's not to say the pharmacist did
9 anything wrong in those cases. The prescription may have
17:16:48 10 been completely legitimate when it was filled or when the
11 person brought it in. They just went on to misuse the
12 pills later. Who knows? We can't say that 25 percent of
13 that -- 25 percent represents a pharmacy doing anything
14 wrong, but those the only misused pills in this study.
17:17:11 15 From a pharmacy rather than a medicine cabinet, from a
16 friend or relative or from a drug dealer.

17 So in those cases, in those cases which are
18 not that many it turns out, in those cases when criminals
19 doing drug diversion want to go to a pharmacy to get
17:17:29 20 pills, they can't get it from a friend or a relative or
21 they are the supplier, the drug dealer, or they prefer to
22 go, they have a prescription, a bogus prescription, in
23 those cases when those criminals do drug diversion go to
24 a pharmacy, there are a lot of places they can choose to
17:17:50 25 go before going to a Walgreen's.

1 Let me show you some of this, and we will
2 -- or as the case goes on, you'll see sliced and diced,
3 this information, lots of different ways but you won't be
4 able to change, you know, don't be afraid of math. You
17:18:07 5 can do the math different ways. You will get to see the
6 math done in a lot of different ways, but the conclusions
7 are always going to be the same.

8 So this is the market share of the two
9 counties. All four of the pharmacy chains involved in
17:18:21 10 this case, put all four together. Their market share is
11 37.5 percent. That means more than 60 percent of the
12 opioids being dispensed were being dispensed by other
13 people who are not here with us in court.

14 Mr. Lanier tried to explain MME, I think he
17:18:41 15 got it roughly right. It's a way to recognize that some
16 pills are much stronger than others. So if you have five
17 milligrams of Vicodin, which is Hydrocodone, and five
18 milligrams of Percocet, which is Oxycodone, that Percocet
19 pill is much stronger.

17:18:59 20 So usually when people want to look at
21 which pharmacy is dispensing how much, they want to take
22 into account how strong the pills are. So for that
23 reason, they tend to talk about MMEs, that a lot of them
24 take into account that one pharmacy may be dispensing the
17:19:18 25 same number of pills as another pharmacy, but much, much

1 stronger pills. And if you're concerned about comparing
2 pharmacies, depending on what you're trying to figure
3 out, it's a pretty wordy question, are you dispensing
4 lots of very small pills that people tend to use after a
17:19:36 5 dental procedure, or lots of very, very strong pills that
6 are rarely used, much more rarely used and much more
7 attractive to criminals. People involved in diversion
8 are more interested in diverting these strong pills with
9 more of the drug than tons and tons of weak pills.

17:19:58 10 Who are that 62 percent? Who are we
11 talking about? Well, there are 143 pharmacy, clinic and
12 hospital locations in the two counties that fill opioid
13 prescriptions.

14 This is undercounting in a way. This is
17:20:16 15 only pharmacies, clinics and hospitals. If you get down
16 to individual doctors, some individual doctors dispense
17 significant amounts. If you get down to doctors and
18 dentists, vets, people like that, you'd be giving
19 hundreds and hundreds and hundreds.

17:20:32 20 Here, looking only at pharmacy, clinic and
21 hospital locations that dispense, there are 143 of them.
22 And 13 are Walgreen's pharmacies.

23 And even if you included all of the
24 pharmacy chains in this case, it's 45. Of 143 places to
17:20:55 25 dispense opioids, every one in this lawsuit, 45; 98 other

1 places you can go.

2 What are some of those other places you
3 might go? There are many, many. I just to want talk for
4 a minute about these three.

17:21:10 5 First one you see there is a place called
6 Franklin Pharmacy. It's still there. Franklin Pharmacy
7 is in Trumbull County. As you can see, it is physically
8 a relatively small store. And if you include, if you
9 look at how much dispensing goes on at Franklin Pharmacy
17:21:35 10 compared to Walgreen's pharmacies, Franklin Pharmacy is
11 five times busier than the busiest Walgreen's pharmacy in
12 all of Trumbull County.

13 That little store is dispensing five times
14 as many opioids as the busiest Walgreen's in the entire
17:21:52 15 county.

16 The one in the middle is called Overholt's.
17 I know you can see this, but that's the same building.
18 If you notice, Overholt's and Champion Medicine Shoppe is
19 actually the same.

17:22:08 20 The reason they changed names is that
21 Mr. Overholt lost his license, the Board of Pharmacy.
22 The police shut down Overholt's Pharmacy. Mr. Overholt
23 was arrested, the other pharmacists were arrested.
24 Mr. Overholt has pled guilty to five counts of criminal
17:22:29 25 drug trafficking.

1 The only reason he is not in jail is
2 because of his -- there is a well known pill mill doctor
3 in the area. His name was Peter Franklin. No
4 connection, as far as I know, to Franklin Pharmacy. He
5 was never prosecuted because he was murdered by his wife,
6 unfortunately, during the investigation. But Dr. Peter
7 Franklin, this well-known pill mill doctor, he used to
8 write prescriptions. He would write on prescriptions
9 "Fill only at Overholt's."

10 He didn't want his patients showing up at
11 Walgreen's or around these other pharmacies where the
12 pharmacist was likely to call the police, at least not
13 his questionable prescriptions. He may have written
14 other prescriptions that he wasn't so worried about.
15 "Fill only at Overholt's."

16 Champion next door is what the new owners
17 called it. I believe it's closed today.

18 So knowing that, knowing that there are so
19 many other places in these counties where a criminal can
20 get involved in diversion, knowing that, why do the
21 lawyers say that these criminals involved in diversion go
22 to Walgreen's? What does the evidence show us?

23 We're going to talk about three things and
24 this will be the last thing I talk about. The first is
25 the red flag theory, and there are all these

1 prescriptions that trigger a red flag.

2 Now, the fact that a prescription had a
3 quote, unquote, red flag, paying cash, for example, that
4 doesn't mean it's a crime. Like some people pay cash for
17:24:19 5 the very understandable reason that they don't have
6 prescription drug coverage. Pay cash, might be an issue.
7 Might not.

8 Any one of those red flags might be an
9 issue, might not be.

17:24:33 10 But the red flags, what they did, they take
11 these red flags and say, okay, let's apply a computer
12 program. Everyone who pays cash, red flag. Every
13 prescription where someone drove 25 miles to see a
14 doctor, boom, red flag. Every time a doctor wrote the
17:25:42 15 same prescription more than X many times, boom, red flag.
16 And sure enough, you do it that way, you get a lot of red
17 flags.

18 You get a lot of red flags because you are
19 using a computer program and completely ignoring that
17:26:02 20 pharmacists are licensed professionals expected, required
21 to use their professional judgment when they look at
22 their prescription and decide if they have a concern
23 about it or not.

24 And sure enough, these red flags make no
17:26:20 25 sense when you apply it the way they have.

1 For example, one of their, one of their
2 favorite red flags is somebody who drove 25 miles to see
3 the doctor or to go to the pharmacist. Everyone in
4 Trumbull County who went to see a specialist at the
17:26:38 5 Cleveland Clinic drove more than 25 miles. That's not
6 unusual. That's not suspicious. That's not even
7 interesting.

8 Think how many people drive to work either
9 to a job site on one day or to their regular office,
17:26:54 10 drive more than 25 miles and prefer to fill a
11 prescription near work than at home because of the hours
12 that they are working. That's not unusual by itself.

13 Now, if someone shows up from Cincinnati
14 for no reason, yeah, you might want to ask why is that
17:27:12 15 person in Trumbull County from Cincinnati and they can't
16 explain it.

17 Another one is doctors who repeatedly write
18 the same prescription. Now, when Dr. Franklin wrote the
19 same prescription over and over again, maybe that was
17:27:24 20 cause for a concern. I'm not going to argue with that.
21 But other doctors who write the same prescription over
22 and over again are, for example, dentists.

23 Most dentists will tell you that everyone
24 who gets a root canal who wants a pain pill, they leave
17:27:42 25 with the same two-day prescription, three-day

1 prescription for pain relief. That dentist is not
2 writing different prescriptions for every person.

3 Orthopedic surgeons, people who do knee
4 surgeries, it is very common that everyone who gets the
17:27:58 5 same knee procedure leaves the surgery with the same
6 prescription for short-term pain relief. It's not
7 unusual, it's not even interesting.

8 The red flag doesn't show you anything
9 about any actual diversion in the two counties. It tells
17:28:19 10 you about a huge number of prescriptions that
11 conceivably, maybe, we don't know, could have been
12 involved in diversion.

13 Next is Mr. James Rafalski. James Rafalski
14 was a diversion investigator at the DEA. He spent his
17:28:39 15 entire career with the Drug Enforcement Administration
16 doing exactly what this case is about: Investigating the
17 diversion of prescription drugs. That's what he did.

18 Now, he works for the lawyers. We are told
19 he is going to come and testify. You will hear from him
17:28:59 20 directly.

21 If you really thought, if somebody really
22 thought there was diversion going on at a Walgreen's
23 store, Mr. Rafalski is the guy you would ask. He is the
24 guy you would think of asking. Take a look, is there any
17:29:16 25 diversion going on? Nobody asked him.

1 You are going to find out that nobody asked
2 Mr. Rafalski and he didn't look. He is not aware of a
3 single prescription, a single prescription diverted from
4 a Walgreen's in Lake or Trumbull County, although again,
17:29:35 5 if there is somebody in this case at least working for
6 the plaintiffs' lawyers, we would expect to go out and
7 figure that out, you think we'd hear about it from
8 Mr. Rafalski.

9 On the plus side, there are working
17:29:49 10 diversion investigators you are going to hear from,
11 people who don't work for lawyers, people who have spent
12 their careers out in the field in Lake and Trumbull
13 Counties and elsewhere in northern Ohio looking for
14 diversion.

17:30:03 15 You will hear from Lake County law
16 enforcement, Trumbull County law enforcement, they have
17 never investigated or arrested a Walgreen's pharmacist
18 who they thought was doing diversion.

19 You're going to hear from inspectors with
17:30:16 20 the Board of Pharmacy. The Board of Pharmacy doesn't
21 just license pharmacists. I talked about that earlier.

22 The Board of Pharmacy inspects pharmacies.
23 They come to pharmacies on a regular basis and inspect
24 pharmacies and they look for signs that the pharmacy is
17:30:32 25 involved in diversion. That's what they want to know.

1 And you're going to find out that they have
2 never had that concern about a Walgreen's pharmacy.

3 And sure enough, they will write up
4 pharmacies for an infraction. If they see something at a
17:30:46 5 Walgreen's pharmacy that they don't like, that they think
6 isn't up to code, they will write it up, and they've
7 never had any concerns about diversion.

8 Last thing I want to talk to you about is
9 the data. This is the math that Mr. Lanier is worried
17:31:06 10 about. This is the math. This is the data. This is
11 hard evidence. Okay? There are a lot of people that say
12 a lot of things, what they think, give a lot of opinions.
13 This is hard evidence.

14 What we wanted to do is we wanted to figure
17:31:25 15 out what does Walgreen's look like if you compare it to a
16 real pill mill? We know pill mills exist. We know that
17 there was one in Trumbull County. Overholt's that I
18 talked about.

19 What happens when you look at the data,
17:31:37 20 when you look at the real numbers and you compare
21 Overholt's and other high-volume pharmacies to
22 Walgreen's? And what you will see is they look nothing
23 like each other.

24 So this is shipments to the pharmacies.
17:31:53 25 This is what these pharmacies were ordering because they

1 needed -- the pills they were ordering so that they could
2 dispense to patients.

3 Over on the far left, you see Overholt's.
4 This is measured in MMEs. Again, you could do this with
17:32:11 5 dosage units, although you wouldn't be capturing. If you
6 did dosage units, what you'd miss is the fact that
7 Overholt's loved to dispense 80-milligram OxyContin, the
8 strongest most dangerous dose of OxyContin. At
9 Walgreen's, they dispensed a lot of 5 milligram pills for
17:32:33 10 people who had dental procedures. But you could do it
11 any way you want.

12 Overholt's and Champion, the new owner,
13 we've had this data for 2006 and 2014. I want to assure
14 you that's not cherry-picking, that's all the years we
17:32:44 15 have the data for. If we had more years, we would give
16 it to you, four more years.

17 Overholt's and Champion, 278 million.
18 Franklin, that's the little store I showed you on the
19 corner, Franklin is 248 million. These are not
17:33:02 20 cherry-picked. These are every Walgreen's in Trumbull
21 County. Every single Walgreen's in Trumbull County.

22 You could add these up together, pile them
23 all up, it would still be lower than the Franklin number.

24 Here's another one. This is cash payments.
17:33:20 25 You heard Mr. Lanier talk about cash payments as a red

1 flag, something to be worried about. And sure enough,
2 when people are doing diversion, they often pay cash.
3 They don't use Blue Cross. When people pay cash, it
4 could be diversion. It could be that they don't have
17:33:38 5 prescription drug coverage.

6 This is what the numbers look like. At
7 Overholt's, when they dispense opioids, 27 percent of the
8 time people were paying cash. Champion, the new owners
9 who took over after Mr. Overholt got arrested, almost 17
17:33:56 10 percent. Franklin is a lot lower, 8.5 percent. The
11 nearest Walgreen's, this is not a cherry-picked
12 Walgreen's, it was about five, six miles away, we said
13 let's pick the nearest Walgreen's, the one that is most
14 likely to see the same customers. The nearest
17:34:14 15 Walgreen's, 4.3 percent.

16 As the case goes on, you will see lots more
17 charts and graphs like this, probably more than you want
18 to see. This is just a selection of the type of evidence
19 you are going to be presented.

17:34:29 20 When this all comes together, I think you
21 will conclude that yeah, there is diversion going on in
22 Trumbull County. Sure there is, but no evidence that it
23 is at Walgreen's.

24 So let me wrap up.

17:34:44 25 I will repeat what I said at the beginning

1 because it's important and I want you -- I want to make
2 sure that everyone understands.

3 Nobody here, nobody in this room, certainly
4 nobody in Walgreen's is going to tell you that the opioid
17:35:06 5 crisis isn't serious, that it hasn't ruined lives, that
6 it hasn't taken lives. Nobody will tell you that.

7 Nobody is going to say that there isn't a
8 lot of blame to go around. Before this case is over, you
9 are going to hear about criminal drug gangs that
17:35:27 10 trafficked heroin up from Mexico. You're going to hear
11 about that.

12 You're going to hear about illicit Fentanyl
13 coming from China. Illicit Fentanyl is that super, super
14 strong opioid that gets mixed in with heroin sometimes
17:35:40 15 that has caused so many overdoses.

16 You're going to hear about drug gangs
17 trafficking pills from out of state. You will hear about
18 a drug gang trafficking pills up from Florida. You are
19 going to hear about heroin dealers, heroin dealers who
17:35:57 20 prey on some of the most desperate people in our
21 communities.

22 You are going to hear about criminals who
23 fake their symptoms to get good doctors to write
24 prescriptions. You are going to hear about doctors who
17:36:11 25 became criminals, doctors who violated their oaths, who

1 took money to write fake prescriptions.

2 But at the end of the case, I'm confident
3 that of all the ways people get pills for illegal
4 diversion, of all the ways they get illegal drugs in Lake
17:36:37 5 and Trumbull Counties, you are not going to hear any
6 evidence that persuades you they do it by going to
7 Walgreen's.

8 That's what I have. I want to thank you
9 for listening to me. I will ask you at the end of what
17:36:53 10 is already a long afternoon, I can't tell you how much I
11 appreciate it. My colleagues appreciate it, everyone in
12 this room appreciates the time you have given to this
13 case and the attention you have given to this case.

14 And no one appreciates that more than my
17:37:08 15 client and the pharmacists at Walgreen's.

16 Thank you so much.

17 THE COURT: All right. Thank you,
18 Mr. Stoffelmayr.

19 All right. We will break for the day,
17:37:20 20 ladies and gentlemen. Again do not read, review,
21 consider anything in the media about this case. There
22 may be something. If so, ignore it.

23 Do not discuss this case with anyone, you
24 know, family members, friends. Say this mean Judge has
17:37:38 25 ordered me not to discuss this case, talk about it until

1 it's over.

2 Have a good evening, and we'll pick up
3 promptly at 9:00 a.m. tomorrow morning.

4 (Jury out.)

17:38:28 5 THE COURT: Okay. Everyone can be seated
6 for a minute. Just a couple things I want to pick up.

7 First, why -- Sue, if you can get someone
8 with IT to work on things before court because I want you
9 to be able to hear. I don't know if the problem is some
17:38:42 10 sort of interference with this screen, if it was the
11 mics, but it's important that you be able to hear.

12 So if you can work that out with IT before
13 9:00 o'clock tomorrow morning.

14 Second, I want to take up the problem that
17:39:00 15 Special Master Cohen was having. I spent a lot of time
16 with him yesterday about these objections to questions
17 and answers in the deposition excerpts that people want
18 to play.

19 Look, the simplest thing for me to do, and
17:39:21 20 I thought of doing it and I still might, is just say
21 forget the whole exercise, we're not going to have any
22 depositions played. Jurors tune it out anyway. Everyone
23 will testify either live in court or live by video and
24 from some lawyer's office around the country.

17:39:39 25 That's simple. The jurors are going to pay

1 a lot more attention to it, so maybe we should just do
2 that. And I'm putting it out now for suggestion.

3 So what does everyone think about that?
4 Because we're not going to continue to do what went on
17:39:56 5 over the weekend. That isn't going to happen.

6 MR. LANIER: Your Honor, plaintiffs would
7 be great with that.

8 THE COURT: All right. How about the
9 defendants? It just may be simpler and easier.

17:40:07 10 Because most of these, most of these
11 objections are going to -- I mean, first of all, if it's
12 done live, forget it. I'm not going to allow someone to
13 ask a compound question, two or three questions at once.

14 If it's hearsay, it's out. All right? If
17:40:22 15 there's a problem with the document, I guess I'll have to
16 deal with it on the fly.

17 I mean, again, if we're -- I mean I'm going
18 to charge the time to someone if I've got to interrupt
19 testimony.

17:40:35 20 MS. SULLIVAN: Your Honor, Diane Sullivan
21 for Giant Eagle.

22 I hadn't been involved, Your Honor, in the
23 deposition process and the objections but one concern I
24 have about doing what Your Honor suggests is that there
17:40:46 25 are third-party witnesses who are out of our control.

1 Some of them work for the Government and they are in the
2 can, and I think it's appropriate under the Federal Rules
3 that we be able to play those if they're available to us.

4 THE COURT: Well, Ms. Sullivan, I'm not
17:41:02 5 saying it's inappropriate. I mean it's certainly used
6 but if the procedure -- the procedure isn't working. All
7 right? People have, you know, put in rafts of objections
8 and in a manner that Special Master Cohen couldn't deal
9 with it. So we're not doing that anymore.

17:41:14 10 So if it can't be streamlined so that it
11 can be dealt with efficiently, then it's going to be the
12 other way. And I suggest everyone notify these witnesses
13 now that they're -- they may have to come in or testify
14 live at a lawyer's office in their hometown, all right,
17:41:31 15 at some facility.

16 Yes, Mr. Delinsky?

17 MR. DELINSKY: Thank you, Your Honor.

18 I just ask that you give us at least
19 overnight for all defendants to confer.

17:41:46 20 THE COURT: All right. You can confer but
21 I'm making it clear if, if the next deposition that
22 Special Master Cohen has to review has the same problems
23 as the one he reviewed over the weekend, I don't care
24 what anyone says, I'm doing it.

17:42:00 25 Okay? So you're all on notice. Whatever

1 you're giving him tonight, if, if it's like over the
2 weekend, don't do it.

3 Okay? Don't do it. It's over. If you can
4 do it in a way that he can deal with it expeditiously,
17:42:15 5 okay. All right.

6 No bluff. I mean, people know me. This is
7 it. You don't like it, appeal it. But I -- but what was
8 being done was totally improper.

9 So it's really all up to you.

17:42:30 10 MR. STOFFELMAYR: Judge, I'm only
11 tangentially familiar with these issues but I will assure
12 you that we will make sure that message gets back to the
13 people who have been working on this.

14 THE COURT: All right. They may be fine
17:42:43 15 lawyers but this isn't law school, this isn't Moot Court.

16 This is show time, and we don't do it this
17 way. I couldn't care less about leading questions or
18 compound questions. If the witness answered the
19 question, that moots it. Okay? Okay? If the witness
17:42:59 20 said I don't understand the question, so 99 percent of
21 this stuff is irrelevant. If you've got a real serious
22 objection, first of all, if the witness was asked for
23 privileged information, guess what? One of these fine
24 lawyers would have said "Objection, don't answer it."

17:43:13 25 So, okay, anything serious, it wouldn't

1 have been answered.

2 So it's up to you. If you can do it and
3 streamline it and eliminate about 90 percent of what
4 you've asked him to do and do it in a format, in a way
17:43:27 5 that he can address it, fine. If not, we're done with it
6 and you'll just have to either just put in the
7 depositions as they are, questions and the answers, or
8 we'll have to do everyone live.

9 Okay. All right. Have a good evening and
17:43:47 10 I'll see everyone -- Mr. Delinsky?

11 MR. DELINSKY: I don't want to be the
12 person standing in the way of everyone going home but
13 very briefly, Your Honor, today was the first time we
14 heard some of the uses Mr. Lanier intended and plaintiffs
17:44:01 15 intended to put to certain documents.

16 I just want to be clear on the record that
17 we've entered evidentiary objections to particular uses
18 of documents. We didn't interrupt Mr. Lanier.

19 I want to be crystal clear that we will be
17:44:15 20 asserting those objections, and we have not waived them
21 by not interrupting.

22 THE COURT: You haven't waived anything.

23 MR. DELINSKY: Okay. Thank you, Your
24 Honor.

17:44:22 25 And then my only -- my second, second issue

1 I'd like to raise is Mr. Lanier raised one assertion of
2 law. There's obviously wide disagreement on what the law
3 is.

4 But there was one in particular that I
17:44:34 5 think we're all in agreement on, and that the insinuation
6 was incorrect, and that is that he made the suggestion
7 that the requirements of the CSA are different for chains
8 than they are for small pharmacies. And that's not the
9 case.

17:44:50 10 The regulations are the regulations.

11 THE COURT: All right. I didn't hear him
12 say that the law is somehow different. Okay.

13 MR. DELINSKY: He said the
14 responsibility --

17:44:59 15 THE COURT: Well --

16 MR. DELINSKY: -- is greater on the
17 larger --

18 THE COURT: Well, this is Mr. Lanier's
19 editorial remark that a larger company has -- as a market
17:45:10 20 leader or whatever.

21 The law doesn't impose any difference on
22 Walmart, Walgreen's, CVS or Giant Eagle than a mom and
23 pop. And if one of you want to say that, you can say
24 that and that's fine because it's right.

17:45:28 25 So I -- I didn't take it that way but I can

1 see that someone could have heard it and I suggest one of
2 you get up and correct that and you've got three chances,
3 you know, you don't all have to say it tomorrow but
4 someone, someone should say it and it's a correct
17:45:43 5 statement of the law.

6 MR. DELINSKY: Thank you, Your Honor.

7 THE COURT: Okay. All right. We're
8 adjourned.

9 Thank you.

17:45:54 10 (Proceedings concluded at 5:45 p.m.)

11 - - - -

12 C E R T I F I C A T E

13 I certify that the foregoing is a correct
14 transcript from the record of proceedings in the
15 above-entitled matter.

16
17
18
19 /s/Susan Trischan

20 /S/ Susan Trischan, Official Court Reporter
Certified Realtime Reporter

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